

Planning Report

Peat Extraction at
Ballydermot, Co. Offaly and
Co. Kildare





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1. INTRODUCTION

MKO were appointed by Bord na Móna Biomass Ltd, a subsidiary of Bord na Móna plc., hereafter referred to as ‘the Applicant’, to prepare a substitute consent planning application to regularise, without prejudice, the planning status of historical peat extraction works (and associated development works) carried out Ballydermot within the Allen Bog Group (Ticknevin, Glashabaun North, Glashabaun South, Codd 1, Codd 2, Ballydermot North, Ballydermot South, Blackriver, Lullymore, Lullybeg, Barnaran, Killina, Derrybrennan and Lodge Bogs) located in Counties Kildare and Offaly (which are hereafter referred to as the ‘Application Site’). This Planning Report is provided to support the application made to An Coimisiún Pleanála (‘ACP’, ‘the Commission’) under Section 177E of the Planning and Development Act 2000 (as amended) (‘the Act’).

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

- **‘Peat Extraction Phase’:** peat extraction and ancillary activities at the Application Site from July 1988 to the cessation of peat extraction in June of 2020 (July 1988 – June 2020). The Peat Extraction Phase is described in detail in Section(s) 4.4 to 4.7 of Chapter 4.
- **‘Current Phase’:** the management of the Application Site since June 2020 (June 2020 to present). The Current Phase is described in detail in Section 4.7 and 4.8 of Chapter 4.
- **‘Remedial Phase’:** the activities intended to be carried out at the Application Site into the future. The Remedial Phase is described in detail in Section 4.9 of Chapter 4.

Other terminology used throughout this report is outlined below:

- **Application Site:** The area of the Ballydermot Bog subject of this application.
- **rEIA:** Remedial Environmental Impact Assessment Report.
- **rNIS:** Remedial Natura Impact Statement
- **CDP:** County Development Plan
- **OCC:** Offaly County Council
- **KCC:** Kildare County Council

1.1 Site Location Context

The Application Site is located 2.2km southeast of Edenderry, 3.3km west of Allenwood, 2.4km north of Rathangan and 1.7km east of Clonbullogue Village. The site comprises 14. No. bogs located on the Offaly-Kildare County border. The bogs include: Ticknevin, Glashabaun North, Glashabaun South, Codd 1, Codd 2, Ballydermot North, Ballydermot South, Blackriver, Lullymore, Lullybeg, Barnaran, Killina, Derrybrennan and Lodge. The Application Site extends across several townlands which are listed below in **Table 1-1**.

The site measures approximately 10 km in length from north to south, and approximately 10.7 km from east to west, at its widest point. The Grid Reference co-ordinates for the approximate centre of the Application Site are E 266159, N 225145. Under the Water Framework Directive (WFD; Directive 2000/60/EC), the Application Site is located primarily within the Figile_SC_010, Figile_SC_020, Figile_SC_030, Slate_SC_050 and Slate_SC_010 sub catchments with a small section of the site on the north boundary in Boyne_SC_010 sub catchment, and within the Barrow (Catchment ID 14). The Application Site is generally accessible via the local road network branching from the R402 to the north, R403 to the east, the R401 to the west and the R414 to the south, with the latter cutting through the southeast of the site. The Application Site is shown below in Figure 1-1 below.

Table 1-1 Townlands in which the Application Site is located

Bog Reference	County	Townlands - Kildare	Townlands - Offaly
Ballydermot North	Kildare/Offaly	Killinthomas	Clonbrown, Cushaling, Ballydermot, Clonmel
Ballydermot South	Kildare/Offaly	Rathangan, Killinthomas, Cushaling, Ballysooghan North, Ballinure	Clonbrown, Coolygagan, Clonroosk Big, Clonroosk Little
Blackriver	Kildare	Cappanargid, Killinthomas, Cushaling, Killyguire, Lullybeg	N/A
Lullybeg	Kildare	Lullymore West, Lullybeg	N/A
Lullymore	Kildare	Lullymore West, Lullybeg	N/A
Lodge	Kildare	Killina Upper, Ballybrack, Killina Lower, Lullymore East, Allenwood South	N/A
Killina	Kildare	Lullymore West, Derrybrennan	N/A
Barnaran	Kildare	Cappanargid, Killyguire, Lullymore East, Barnaran, Lullybeg	N/A
Derrybrennan	Kildare	Ticknevin, Ballybrack, Kilpatrick, Derrybrennan	N/A
Glashabaun North	Kildare/Offaly	Ticknevin, Cushaling, Derries	Codd
Glashabaun South	Kildare/Offaly	Ticknevin, Cushaling, Lullymore West, Lullybeg, Derrybrennan	N/A
Ticknevin	Kildare/Offaly	Clonkeen	Derries, Cloncanon
Codd 1	Kildare/Offaly	Cushaling	Cloncant, Shean, Ballydermot
Codd 2	Offaly	N/A	Cushaling, Codd, Shean

The lands within the Application Site represent approximately 33% of the Allen Bog Group which is comprise a total of 32 no. bog units and has a total area of approximately 18,235 ha. The Application Site comprising 14 no. bog units occupies an area of approximately 5,4648 ha, comprising primarily of cutaway bog. Infrastructure ancillary to peat extraction at present at the Application Site, for which substitute consent is being sought (refer Chapter 4 of the EIAR for details) are:

- Surface water drainage system including silt ponds and pumps;
- Vegetation clearance;
- Welfare Facilities and associated septic tank;
- Storage containers and sheds;
- Vehicular and rail bridge crossing;
- Railway infrastructure.

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

Peat extraction ceased at the Application Site in June 2020. As part of the decommissioning process, the process of transporting remaining peat stockpiles off the bogs commenced following the cessation of peat extraction in June 2020. The final stockpiles were transported off-site by October 2021.

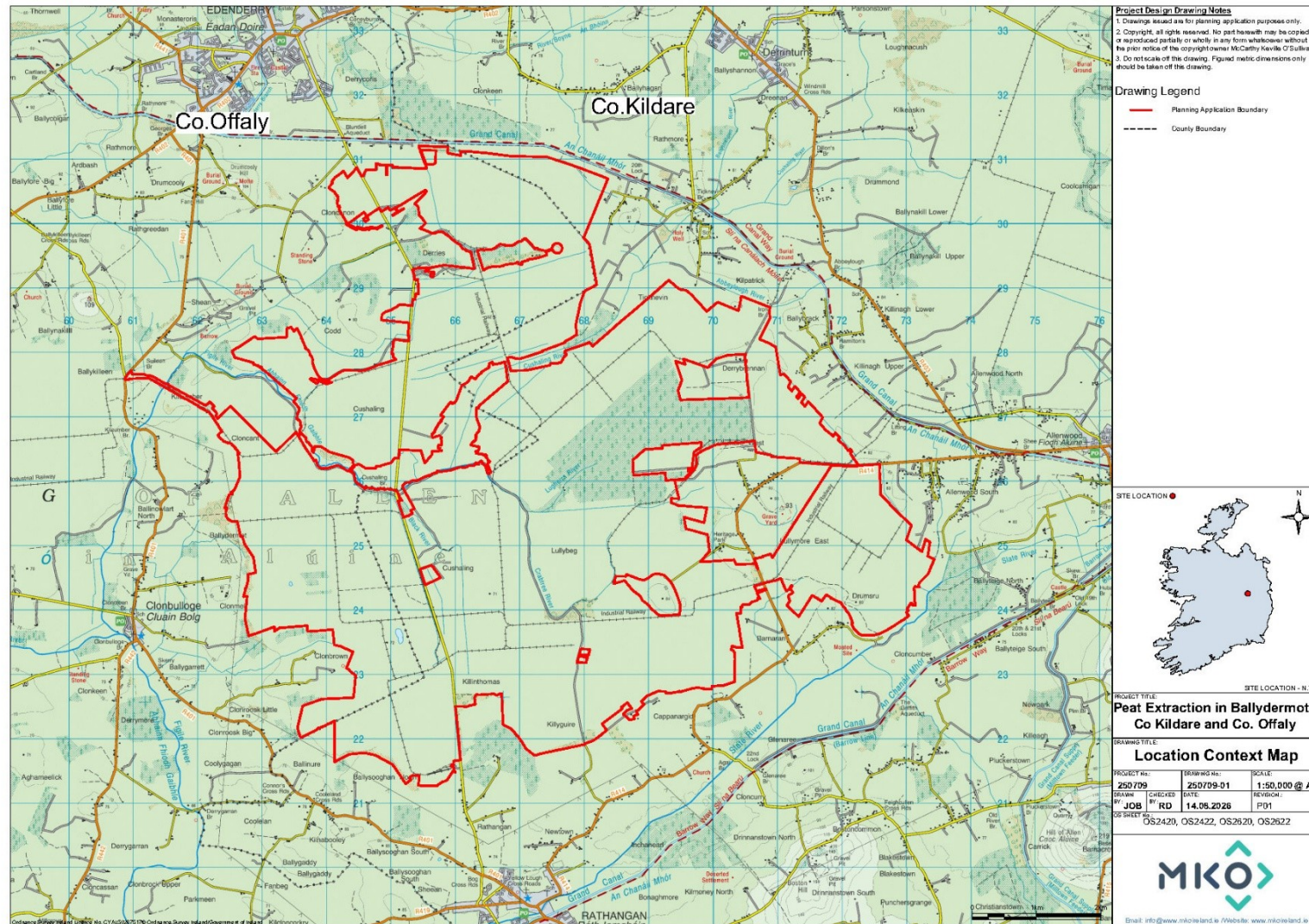


Figure 1-1: Site Location Context

1.2

Legislative Context for Substitute Consent

This application for substitute consent is made pursuant to updates in legislation on Substitute Consent brought in under the Planning and Development, Maritime and Valuation (Amendment) Act 2022. The Planning and Development, Maritime and Valuation (Amendment) Act 2022 (Commencement of Certain Provisions) (No.2) Order 2023 (S.I. 645 of 2023) was signed on 15th December 2023 by Mr. Darragh O'Brien, T.D., Minister for Housing, Local Government and Heritage and came into effect on 16th December 2023.

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

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

Peat extraction on all Bord na Móna ('BnM') bogs ceased in 2020 and the company will not be resuming peat extraction at any time in the future. The purpose of this Substitute Consent application is to regularise, without prejudice, the planning status of the Application 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 20th September 2012 which inserted Section 4(4) of the Act. Section 4(4) legislates that development which is typically exempt (e.g., industrial peat extraction pre-2012) is no longer exempt if an Environmental Impact Assessment (EIA) or an Appropriate Assessment (AA) of the development is required. Notwithstanding this provision, the legal planning status of industrial peat extraction remained uncertain and unclear in practice up until September 2019, as summarised below.

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

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

Please refer to Chapter 2, Section 2.1.1 of the rEIAR for further details on the historic planning legislation relating to peat extraction activities.

1.4

Peat Regulations (2019)

The ‘Peat Regulations’ were enacted in January 2019, following the above judgment under [2018] IEHC 58, which consisted of two pieces of legislation¹ that provided for an exemption from planning permission for large scale peat extraction activity (30ha or over) and the introduction of a regulatory framework (to include both EIA and AA) for these developments to be operated by the EPA within its activity licensing regime. The ‘Peat Regulations’ were subsequently challenged², and ultimately quashed, by Mr Justice Simons by way of his judgment on 20th September 2019, and the following Order (18th October 2019) on the basis that they were invalid on the grounds that the legislation was inconsistent with the requirements of the EIA Directive and the Habitats Directive, and the use of secondary legislation to give effect to the new licensing regime under the EPA was *ultra vires*. As such, planning permission is now required for commercial peat extraction over 30 hectares and consequently substitute consent is required for relevant peat extraction activities.

1.5

Baseline Assessment Date

This section sets out the relevant environmental baseline that applies to the subject application (including the associated rEIAR and rNIS), having regard to the legislative context pertaining to the site and the historic peat extraction activities.

In the first instance, it is clear that no obligations are imposed by the EIA and Habitats Directives in respect of development which took place before they came into force, i.e. the latest date for transposition of those Directives, 3rd July 1988 and 21st May 1994 respectively. Put simply, the Directives do not purport to have retrospective effect.

Relevant Case Law

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

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

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

“37. If it should prove to be the case that, since the entry into force of Directive 85/337, works or physical interventions which are to be regarded as a project within the meaning of the directive were carried out on the airport site without any assessment of their effects on the environment having been carried out at an earlier stage in the consent procedure, the national court would have to take account of the stage at which the operating permit was granted and ensure that the directive was effective by satisfying itself that such an assessment was carried out at the very least at that stage of the procedure.” (Emphasis added)

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

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

1988 Baseline

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

Although no EIA or AA can be required of development which took place prior to the latest date for transposition of the Directives, it is clear that in considering cumulative or in combination effects of development to which the Directives do apply, it is necessary to consider the effects of that development cumulatively or in combination with existing development, even development which took place before the Directives came into force³.

1.6

Works for which Substitute Consent is being sought

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

- Industrial scale peat extraction (milled peat, sod peat, sod moss and bin sod) at the Application Site from 1988 to June 2020;
- Installation, use and maintenance of surface water drainage infrastructure (drains, silt ponds, pumps) at the Application Site to facilitate peat extraction activity from 1988 to present day;
- Vegetation clearance to facilitate peat extraction activity from 1988 to June 2020;

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

- Provision of 1 no. welfare building, 1 no. handwashing facility, a toilet cubical building and an associated septic tank, 19 no. containers, 2 no. sheds, 8 no. vehicular bridges and 7 no. rail bridges;
- Use and maintenance of pre-existing railway infrastructure to facilitate peat extraction from 1988 to present day;
- Control Measures associated with the above, inclusive of the IPC Licence measures (Ref. P0503-01) which commenced from 2000 onwards to the present day; and,
- All associated site development and ancillary works.

2.

BACKGROUND

2.1

Development at Ballydermot Bog

The development of the Application Site commenced in the 1930s during the First Development Programme. Table 2-1 below summarises the peat extraction timelines at the Application Site.

Table 2-1 Ballydermot Bog – Operational History.

Bog Reference	Commencement of Site Preparation Works (vegetation clearance and drainage insertion)	Extraction began	Extraction Ceased
Ballydermot North	1946	1950	2020
Ballydermot South	1946	1950	2020
Blackriver	1947	1950	2020
Barnaran	1954	1959	2020
Lullybeg	1935	1935	2004
Lullymore	1935	1935	1992
Lodge	1947	1953	2020
Killina	1935	1935	2020
Derrybrennan	1959	1969	2015
Glashabaun North	1947	1951	2020
Glashabaun South	1947	1951	2020
Ticknevin	1973*	1981*	2019
Codd 1	1959*	1973*	2020
Codd 2	1973*	1981*	2019

*Estimated date indicated by available aerial imagery which are included in Appendix 4-5 of this rEIAR.

BnM records indicate that approx. 12,595,201 tonnes (sod, milled and sod moss combined) were extracted from the Application Site for the period 1935 to June 1988 inclusive, as detailed in Chapter 4 of the rEIAR. Extraction of milled peat commenced at the Application Site in 1935, sod peat commenced in 1950, and sod moss peat extraction commenced in the late 1970s. Further details of estimated peat extraction volumes from 1935 to June 1988 is provided in Section 4.3.5 of Chapter 4 of the rEIAR.

Milled, sod and sod moss peat extraction continued on the Application Site after June 1988, and bin sod peat extraction commenced on the Application Site in 2000. BnM records indicate that the total volume of peat extracted at the Application Site from July 1988 to June 2020 is estimated to be 11,174,206 tonnes (sod, milled, sod moss and bin sod combined). Further details of estimated peat extraction volumes for the Peat Extraction Phase are provided in Section 4.6.1 of Chapter 4 of the rEIAR.

Industrial scale peat extraction paused across the Application Site in 2019 until June 2020 where extraction commenced again for 3 weeks in June before ceasing permanently across the Application Site in June 2020 following the High Court's judgment on *Friends of the Irish Environment Ltd v Minister for Communications, Environment & Climate Action & Ors.* [2019] IEHC 646, (as discussed in greater detail in Section 2.1.1 of the rEIAR) which set aside the Peat Regulations⁴ in their entirety. Peat extraction ceased when it was confirmed that peat extraction could not re-commence prior to An Bord Pleanála's (now referred to as 'An Coimisiún Pleanála') decision on an application for substitute consent, ABP Ref: SU19. 307279 (which was ultimately withdrawn by the Applicant on the 14th of January 2021). BnM formally announced in January 2021 that all industrial scale peat extraction on lands within its management would permanently cease in line with its on-going climate action programme and its transition to becoming a climate solutions company.

During the Current Phase, the operations at the Application Site have reduced to the removal of stockpiled peat which was completed by October of 2021. Stockpile removal was primarily carried out by lorry, but some stockpiled peat was removed by rail to Edenderry Power Station.

2.2

Site Planning History

There have been a range of planning applications lodged for developments which are either within the overall footprint of the Application Site, or are adjacent to the Application Site, not all of which are associated with peat extraction and ancillary activities at the Application Site. Table 2-2 below lists all of the valid applications within or adjacent to the Application Site boundary.

It should be noted that some of the planning applications listed in Table 2-2 do not have any connection with the licenced peat extraction and ancillary activities undertaken within the Application Site. These developments have been considered within the cumulative assessment carried out as part of the rEIAR and rNIS.

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

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

Planning Authority	Pl. Ref.	Description	Planning Authority Decision
Kildare County Council	Pl. Ref. 72702	Erection Of Covered Loading Bay & Bagging Plant	Granted - 28/02/1972
Kildare County Council	Pl Ref. 578/83	Erection of canteen at Ballydermot Works	Granted – 29/06/1983
Kildare County Council	Pl. Ref. 33472	Extension to Buildings	Granted – 26/05/1972
Kildare County Council	Pl. Ref. 7883	Erection of workshop extension	Granted - 28/02/1978
Kildare County Council	Pl. Ref. 83578	Erection Of Canteen	Granted - 28/02/1983
Kildare County Council	Pl. Ref. 841135	Erection of pilot plant at Lullymore Briquette Factory at Carbury, Co. Kildare	Granted - 28/02/1984
Kildare County Council	Pl. Ref. 85957	Erection of a beef suckling unit at Peatland Research Unit	Granted - 28/02/1985
Offaly County Council	Pl. Ref. 86184	Rail Underpass	Granted – 15/07/1986
Kildare County Council	Pl. Ref. 87251	Peat Interpretative Centre	Granted - 28/02/1987
Offaly County Council	Pl. Ref. 88182	Electric wires across Edenderry/ Rathangan Road	Granted – 14/07/1988
Kildare County Council	Pl. Ref. 89128	Loose briquette store	Granted – 04/04/1989
Kildare County Council	Pl. Ref. 891343	Alterations and additions and part change of use of The National Bogland Centre on site	Granted – 09/10/1990
Kildare County Council	Pl. Ref. 901358	Change of use of one room to craft workshop and extension to same	Granted – 11/12/1990
Offaly County Council	Pl. Ref. 97520	Construction of Railway Underbridge	Granted – 19/09/1997

Planning Authority	Pl. Ref.	Description	Planning Authority Decision
Kildare County Council	Pl. Ref. 971140	To construct a Railway Underbridge	Granted – 12/11/1997
Kildare County Council	Pl. Ref. 987	Retention of tea rooms at Lullymore Heritage Park	Granted – 21/08/1998
Kildare County Council	Pl. Ref. 12943	Erection of a guyed wind monitoring mast, with instruments, up to 100 m in height, on its lands	Granted - 07/06/2013
Kildare County Council	Pl. Ref. 17840	for an existing guyed wind monitoring mast, with instruments, 100m in height, for a further period of three years on its lands. The purpose of the mast is to assess the suitability of the company's adjacent lands for wind farm development. Original planning application reference number PL 12/943	Granted – 11/09/2017
Kildare County Council	Pl. Ref. 20307279	Substitute Consent to regularise the status of historic peat extraction (and ancillary works) on the milled peat production bogs of the Allen Bog Group located in counties Offaly, Westmeath, Laois and Kildare	Withdrawn
Offaly County Council	Pl. Ref. 97699	Railway underbridge	Granted – 19/03/1998
Kildare County Council	Pl. Ref. 201142	Retention permission for continued use of an existing guyed wind monitoring mast, with instruments, 100m in height on its lands at Blackriver Bog, Lullybeg, Co. Kildare for a further period of three years. The purpose of the mast is to assess the suitability of the company's adjacent lands for wind farm development. Previous planning application reference numbers: PL12/943 and PL17/840,	Granted – 18/05/2021
Offaly County Council	Pl. Ref. 19606 ACP Ref. 306924 20	A 10-year planning permission with a 30-year operational life for development on a site area of 60.674 hectares. The development will consist of up to 8 (eight) wind turbines with a tip height of up to 187 metres, and all associated foundations and hardstanding areas; approximately 4,750 metres of new internal access roads, associated drainage and turning areas; upgrade of approximately 3,500 metres of the existing I50062 public road including upgrade of the existing bridge; a new bridge crossing of the Figile river to provide access between turbine 3 and turbine 4; a 2,950-metre recreation trail and all associated development to include gravel pathways, a footbridge across the Figile river, a parking area, signage, information boards and outdoor fitness equipment; an off-site electrical substation and a battery energy storage facility; all associated underground electrical and communications cabling to connect the turbines to the substation including	Granted – 21/02/2020

Planning Authority	Pl. Ref.	Description	Planning Authority Decision
		approximately 1,550m along the R401 regional road; a spoil storage area; a permanent meteorological mast up to 110.5 metres high; 2 no. Temporary construction compounds; 2 no. Temporary blade adapter set-down areas within the wind farm site and at the junction of the R402 and R401 at Rathmore, Edenderry, Co. Offaly; turbine delivery route works including widening of the junction of the R420 and R402 at Ballina, Geashill, Co. Offaly and all associated site development works. The overall development is for a nine (9) turbine wind farm, with a separate planning application being submitted to Kildare County council for one (1) turbine located in the townland of Ticknevin, Carbury, Co. Kildare. An environmental impact assessment report (EIAR) and a natura impact statement (NIS) has been prepared in respect of the application	
Kildare County Council	PI Ref. 191323 ACP Ref.	A 10-year planning permission with a 30-year operational life for development on a site area of 3.23 hectares in the townland of Ticknevin, Carbury, Co. Kildare. The development will consist of up to 1 (one) wind turbine with a tip height of up to 187 metres, and all associated foundations and hardstanding areas, 20 metres of new wind farm road, and all associated underground electrical and communications cabling. This single turbine application forms part of a larger wind farm development located within County Offaly and Kildare with a separate planning application being submitted to Offaly County Council concurrently. The overall development will consist of up to 9 turbines (8 in Offaly and 1 in Kildare) with a tip height of up to 187 metres, and all associated foundations and hardstanding areas, approximately 4,750 metres of new internal access roads, associated drainage and turning areas; upgrade of approximately 3,500 metres of the existing L50062 public road including upgrade of the existing bridge; a new bridge crossing of the Figile River to provide access between Turbine 3 and Turbine 4; a 2,950-metre recreation trail and all associated development to include gravel pathways, a footbridge across the Figile River, a parking area, signage, information boards and outdoor fitness equipment; an off-site electrical substation and a battery energy storage facility; all associated underground electrical and communications cabling to connect the turbines to the substation including approximately 1,550 metres along the R401 Regional Road, a spoil storage area; a permanent meteorological mast up to 110.5 metres high; 2 No. temporary construction compounds; 2 No. temporary blade adapter set-down areas within the wind farm site and at the junction of the R402 and R401 at	Granted - 23/09/2020

Planning Authority	Pl. Ref.	Description	Planning Authority Decision
		Rathmore, Edenderry, Co. Offaly; turbine delivery route works including widening of the junction of the R420 and R402 at Ballina, Geashill, Co. Offaly and all associated site development works. This application is accompanied by an Environmental Impact Assessment Report and a Natura Impact Statement,	
ACP	LS19.312849	Leave to Apply for Substitute Consent for peat extraction and all associated bog development works.	Withdrawn
ACP	LS19.306241	Application for leave to apply for substitute consent under section 177C of the Planning and Development Act 2000, (as amended) to regularise the planning status of Bord na Móna historic peat extraction (and ancillary works) on the milled peat production bogs. Allen Bog Group located in counties Offaly, Westmeath, Laois and Kildare.	Board's Decision to Grant quashed by Order of the High Court
ACP	SU19.307279	Application for substitute consent in relation to Peat Extraction at Bogs in the Allen Bog Group:	Withdrawn
Offaly County Council	Pl. Ref. 22494	The development of (a) approximately 970m of new internal access roads for the permitted Cushaling wind farm (Planning ref. Pl2/ 19/606 and ABP 306924-20), (b) upgrade of approximately 560m of an existing Bord na Moná bog access road, (c) construction of a 1.6km double circuit 33kv underground collector cable from the permitted Cushaling wind farm to the permitted wind farm substation, (d) demolition and replacement of a Bord na Moná bogland access bridge and (e) relocation of the permitted Cushaling wind farm substation 25 meters southwest. A natura impact statement (NIS) will be submitted to the planning authority with the application	Granted – 04/05/2023
ACP	PA92.323980	Proposed Water Supply Project for the Eastern and Midlands Region	Decision due 02/07/2027

2.1.1 Previous Substitute Consent Application

On the 16th of December 2019, Bord na Móna plc submitted an application to An Bord Pleanála (now known as An Coimisiún Pleanála) seeking leave to apply for substitute consent for peat extraction activities within the Allen Bog Group, which included the part of the Application Site (Ref. LS19.306241). An Coimisiún Pleanála granted leave to apply for substitute consent on the 1st of May 2020. In allowing the Applicant to apply for substitute consent, An Coimisiún Pleanála was satisfied that, in light of the size and scale of the peat extraction carried out subsequent to 20th September 2012 within the Allen Bog Group and the proximity of the peatland sites to a number of European sites, an EIA and an AA were required in respect of the development concerned and exceptional circumstances exist to warrant an opportunity to regularise (without prejudice) the development. This decision of An Coimisiún Pleanála was subsequently quashed on 7th May 2021 as a result of the “Ballysax/McQuaid” ruling of the Supreme Court on 1st July 2020.

In the period between the granting of leave to apply for substitute consent by An Coimisiún Pleanála in 2020 and the quashing of that decision in May 2021, the Applicant lodged an application for substitute consent for the relevant peat extraction works at Allen Bog Group (Ref. SU19. 307279) on the 2nd of June 2020. Subsequent to 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 for substitute consent was withdrawn by the Applicant 14th January 2021.

On the 23rd of February 2022, Bord na Móna plc applied to the Commission for leave to apply for substitute consent at Ballydermot Bog Group in counties Kildare and Offaly (ACP Ref. 312849). Given the enactment of the new legislation (S.I. 645 of 2023 - Planning And Development, Maritime And Valuation (Amendment) Act 2022 (Commencement Of Certain Provisions) (No. 2) Order 2023, which removed the requirement to seek leave to apply for substitute consent from the Commission, this application for leave to apply for Substitute Consent was deemed withdrawn on the 15th January 2024 in accordance with Section 41 of the Planning and Development, Maritime and Valuation (Amendment) Act 2022.

While this current application is different to Ref. LS19.306241 (and Ref. SU19. 307279) 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.

2.2 Integrated Pollution Control Licence (Ref. P0503-01)

The Applicant was granted an Integrated Pollution Control Licence (IPC) Licence (Ref. P0503-01) from the EPA for the Allen Bog Group, within which the Application Site is located, in April 2000. The EPA issues licences that contain strict conditions on how an activity must operate so as to protect the environment from pollution that might otherwise arise. The EPA Act, 1992 specifically prohibits the EPA from granting a licence if emissions from an activity would cause pollution⁵.

As per Condition 2 (Management of the Activity) of the IPC Licence, BnM is required to maintain an Environmental Management System (EMS) which fulfils the requirements of the licence and any associated objectives / targets relating to use of cleaner technology, cleaner production and the reduction and minimisation of waste. The EMS is required to form part of the Annual Environmental Report (AER), which details BnM’s annual record of compliance with the terms of its licence, which is generally

⁵ [Integrated Pollution Control \(IPC\) Licensing | Environmental Protection Agency](#)

submitted to the EPA prior to 31st of March of each year. All AERs 2001-2025 can be found in Appendix 4-3 of the rEIAR (2018 to 2025 are available to view on the EPA's web portal⁶) and have been submitted in compliance with the conditions set out within IPC Licence P0503-01. The EPA's online web facility provides further opportunities for the public to observe records relating to the on-going licenced operations and associated assessments (the public can also make observations/complaints directly to the EPA in relation to any licenced activities) The most recent AER submitted by BnM was the AER for 2025 and covers the 2025 calendar year.

The EPA regularly audits and inspects compliance with its IPC Licences, and these reports are available on the EPA's web portal. Audits and inspections of the Allen Bog Group, which in part includes the Application Site, for 2025 were conducted in April 2025 (site visit). This site visit involved an inspection of Timahoe North and South bogs, during which no observations were made. Two observations were raised during this site visit in relation to an outstanding action in a Compliance Investigation and extraction activity occurring at Garrymore bog (c. 21km from the Application Site) which have now been resolved.

There was one complaint of an environmental nature (i.e. water quality) raised on BnM's licensed activity during the 2024 calendar year; however, this complaint was of a minor to limited significance and was appropriately managed and closed out during the period with no further actions required. There have not been any open compliance investigations with the EPA since 26th January 2024 regarding BnM's nine IPC Licences, including Ref. P0503-01. The most recent AER (dated 27th March 2025) reported compliance levels of 100% for stormwater and 99% - 100% for wastewater.

2.2.1

Mitigation and Monitoring Measures

As the Application Site is subject to an IPC licence from the EPA, it is worth noting here the delineation between the Commission and the EPA regarding mitigation and monitoring and the conditions that can be imposed by the Commission on the grant of substitute consent.

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

“Notwithstanding section 34 of the [Planning Act, or any other provision of that Act], where a licence or revised licence ... has been granted [by the EPA] or is or will be required in relation to an activity, a planning authority or An Bord Pleanála shall not, where it decides to grant a permission under section 34 or substitute consent, within the meaning of section 177A, of that Act in respect of any development comprising or for the purposes of the activity, subject the permission to conditions which are for the purposes of:

(a) controlling emissions from the operation of the activity, including the prevention, elimination, limitation, abatement, or reduction of those emissions, or

(b) controlling emissions related to or following the cessation of the operation of the activity.”

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

“(a)(iii) subject to paragraph (b), where appropriate, [the Board may] specify in the decision measures to monitor the significant adverse effects on the environment of the development (being measures, as regards the types of parameters to be monitored and the duration of the monitoring, that are proportionate to the nature, location and size of the development and the significance of the effects on the environment of the development).

⁶ Annual Environmental Reports 2018-2025 available at: [Authorisation Profile / LEAP Online](#)

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

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

In this regard, it should be noted that regardless of whether substitute consent is granted by the Commission in respect of the Application Site, the Applicant intends to fully satisfy the requirements of Condition 10 of the IPC Licence which is discussed in this Report at Section 3.5. It follows that should the Commission include a condition or conditions relating to remediation of all or part of the site on which the development which is the subject of the grant of substitute consent is situated, the Applicant will be well-placed to comply with those condition(s) to the fullest extent.

2.3 Statutory Planning Policy Context

This section will outline relevant policies from the current Offaly County Development Plan 2021–2027 and the Kildare County development Plan 2023–2029 which is set out in detail below. Previous County Development Plans are also summarised for context, where available, with regards to their policies relating to peat extraction.

A review of the policy documents illustrates that for the lifetime of all County Development Plans, the industrial uses at the Application Site were largely consistent with local planning policy. The industrial heritage of BnM is recognised as part of the cultural heritage of the landscape and as an important contributor to the rural economy. Alongside this, policies to support the eventual transition of the peatlands have been included in more recent CDPs, acknowledging the ecological potential of the area as well as reflecting the emerging climate and energy goals.

2.3.1 Current Planning Policy

2.3.1.1 Offaly County Development Plan 2021 - 2027

The Offaly County Development Plan 2021-2027 (OCDP) was adopted on 10th September 2021 and came into effect 22nd October 2021. Notice of the Proposed Variation No. 1 to the OCDP was given on 15th May 2026 and public consultation on the same closed on 16th June 2026. The proposed variation does not impact the policies and objectives outlined in this report. The OCDP outlines the overall strategy from proper planning and sustainable development as well as a land use plan for the County over a 6-year period. This CDP is informed by the National Planning Framework, Regional Spatial and Economic Strategy and Section 28 Guidelines and is accompanied by:

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

The Strategic Vision for the Plan is:

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

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

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

The phasing out of peat-fired electricity generation is discussed in Section 3.4.1 of the OCDP, a transition away from carbon intensive energy sources is stated as having an impact on employment and communities in the County of Offaly and the wider midlands region of Ireland. Bog restoration and rehabilitation as well as retraining and reskilling of workers are mentioned within this transition. The extensive peatlands are stated within the chapter as having:

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

The policies concerning peatlands in the OCDP is as follows:

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

2.3.1.2 Kildare County Development Plan 2023-2029

The Kildare County Development Plan 2023-2029 (KCDP) came into effect 28th January 2023. The KCDP outlines the overall strategy from proper planning and sustainable development as well as a land

use plan for the County over a 6-year period. This CDP is informed by the National Planning Framework, Regional Spatial and Economic Strategy and Section 28 Guidelines.

The importance of climate action and renewable energy generation is outlined in ‘Chapter 7: Energy & Communication’ of the KCDP, the strategic aim of which is:

“To encourage and support energy and communications efficiency and to achieve a reasonable balance between responding to EU and National Policies on climate change, renewable energy and communications and enabling resources to be harnessed in a manner consistent with the proper planning and sustainable development of the county.”

The KCDP acknowledges the history of the County in relation to commercial peat exploitation and recognizes the *“potential economic benefit of a transition from fossil fuel-based energy production through to investment in renewable energy”*. The KCDP includes policy in support of long-term strategic planning for industrial peatlands as per Regional Policy Objective 4.84 of the Regional Spatial Economic Strategy:

- **EC O51:** *Support Bord na Mona in the preparation of a long-term strategic plan for the former industrial peatlands.*

CAP Actions for Natural Environment & Green Infrastructure set out an objective to *“Protect and restore peatlands”*, and Actions N16 and N17 have been incorporated in the Kildare Local Authority Climate Action Plan 2024-2029 (LACAP) in support of this objective:

- **N16:** *Deliver the enhanced rehabilitation of former industrial peatlands within the County in line with Irelands National Recovery and Resilience Plan, whilst advocating and exerting influence to ensure such projects promote climate action co-benefits and do not contravene relevant environmental protection criteria or cause significant negative environmental effects.*
- **N17:** *Engage with Bord na Móna to explore the appropriate and sensitive diversification of former cutaway peatlands and development of alternative uses such as rewetting and recreational facilities under the brown to green agenda under the National Strategy on Outdoor Recreation, whilst advocating and exerting influence to ensure such projects promote climate action co-benefits and do not contravene relevant environmental protection criteria or cause significant negative environmental effects.*

The Kildare CDP also recognises peatlands as an ecological asset and the opportunity for renewable energy development and nature-based solutions to co-exist.

- **BI O54:** *Work with relevant agencies such as EMRA, BnM, the NPWS, Coillte and adjacent councils to prepare a comprehensive after use framework plan for large cutaway bog sites and associated workshops, office buildings and industrial sites which provide for future sustainable environmental needs and are a significant resource for amenities when peat harvesting ends.*

It is stated with the KCDP that *‘While Bord Na Mona has clear intentions of developing extensive areas to meet government renewable targets – in the form of wind and solar farms - nonetheless, the Bog of Allen represents a unique opportunity for nature based solutions on a grand scale to address the national biodiversity crisis and climate change mitigation.’*

The KCDP also highlights the potential for the creation of ‘Peatway Corridors’; a strategically planned trail network connecting through the Bog of Allen provide connections for amenity, ecology/ecosystem services. It is noted that these Peatway Corridors *‘will be free for energy infrastructure such as solar farms and wind turbines’*.

The regulation of the planning status of the Application Site will enable the progression of any future applications for peatland after uses, such as renewable energy and amenity facilities, which are supported by the KCDP.

2.3.2 Historic Planning Policy

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

2.3.2.1 Offaly County Development Plan 2014 - 2020

The Offaly County Development Plan 2014-2020 (OCDP 2014-2020) was adopted on 15th September 2014 and identifies as a challenge of achieving a reasonable balance between responding to central Government policy on renewable energy and enabling energy resources within the county to be harnessed in a way that is consistent with proper planning and development, in particular the historical role of the County in energy development associated with the peatlands and acknowledges the non-renewable nature of the resource. The CDP recognises BnM as the largest single landowner in the County and the opportunity presented by the cut away bogs for future land uses that can enhance both employment opportunities and habitat potential as *‘much of the area will return to wilderness and contribute to the green infrastructure network of the County’* (Section 2.3.2). In the plan period, the changing nature of the energy market is recognised, and while peat fired electrical stations are still in operation, the plan recognises the limited time remaining for such carbon-based energy production. However, notwithstanding the above, the CDP states that non-renewable energy will still play a role in the generation mix for electricity, specifically peat as an energy source (Section 3.4.2). As such, in relation to the historic uses, the development takes the cut-away bogs as a baseline landscape use and landscape character with the future uses of the bogs such as the Application Site as a site of proposed future change i.e., through restoration or alternative development.

The OCDP 2014-2020 acknowledges the value of the existing transmission infrastructure left from the legacy of peat fired stations. A number of policies and objectives relative to the historical use of the Application Site are outlined below.

➤ Chapter 2: Economic and Enterprise Strategy

‘It is Council policy to actively encourage the redevelopment of brownfield sites for enterprise and employment creation throughout the county, in particular, sites with antecedent uses or disused sites which were formerly ESB plants and BnM work’ (Entp-07).

It is Council Policy to encourage expansion and employment in industries such as agriculture, horticulture, peatlands, food, craft, tourism and energy’ (RDP-11).’

The County Development Plan also recognises the potential of cutaway bog sites for wind energy development.

➤ Chapter 3: Energy Strategy

‘The characteristics of cutaway bog appear to be particularly suitable for wind development. The individual sites on cutaway bogs are large and generally uninterrupted by hedgerows, streams, or other natural features. Many are already connected to each other via corridors i.e. bog railway routes, which will allow for transmission infrastructure and roadways to be built between sites, avoiding impacts on the public road in terms of traffic or visual impact. The areas where peatlands occur have a low density road network and are traditionally sparsely populated, and while they have not completely avoided sporadic urban generated one-off housing, they are the least densely populated areas of the county’

2.3.2.2 Offaly County Development Plan 2009-2015

The Offaly County Development Plan 2009-2015 (OCDP 2009-2015) was adopted on January 19th of 2009, replacing the Offaly County Development Plan 2003-2009. Policies related to the historical activities at the Application Site are noted below. At the time of the writing of the OCDP 2009-2015, 'after use' of cut away bogs and alternative development of cutaway bogs are being considered in the future planning and sustainable development of the county.

➤ Chapter 3: Overall Strategy

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

➤ Chapter 6: Employment, Economy & Enterprise

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

➤ Chapter 10 Rural Development

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

➤ Chapter 12: Environment

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

➤ Chapter 15: Natural Heritage

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

➤ Chapter 16 Landscape and Amenities

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

2.3.2.3 Offaly County Development Plan 2003-2009

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

The OCDP 2003-2009 recognises boglands as a major natural and archaeological resource. The development of this resource and its critical role in employment is also noted. The Council aimed to continue to promote and facilitate the conservation of a representative sample of peatlands and looked to co-operate with Dúchas and the Irish Peatland Conservation Council to have a Bog Conservation Study undertaken the remaining peat resource of County Offaly.

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

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

2.3.2.4 Offaly County Development Plan 1995

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

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

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

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

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

2.3.2.5 Offaly County Development Plan 1987

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

“Over half the industrial jobs in County Offaly are provided by the joint activities of Bord na Mona and the E.S.B. Of the total 2,800 jobs provided by the two, 2,200 are provided in the seven Bord na Mona works and 600 in the three E.S.B Stations. This does not include Bord na Mona seasonal work which amounts to approximately 800 jobs every year. Many of the rural communities in the County are heavily dependent on peat-based employment. On a county-wide basis it is estimated that approximately 12,000, or one-fifth of the total population are directly dependent on this type of employment.”

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

2.3.2.6 Offaly County Development Plan 1967

The Offaly County Development Plan of 1967 (OCDP 1967) details the significance of peatlands and peat production to the County Offaly. At the time of publication, 60% of the total production of BnM was attributable to peat extraction on peatlands located in County Offaly.

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

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

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

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

2.3.2.7 Kildare County Development Plan 2017-2023

The Kildare County Development Plan 2017-2023 (KCDP 2017-2023) came into effect 1st March 2017, replacing the Kildare County Development Plan 2011-2017. Policies related to the historical activities at the Application Site are noted below.

➤ Chapter 7: Infrastructure

“SW 16 Recognise the important role of bogland and other wetland areas in flooding patterns. Development in these areas shall therefore be subject to a Flood Risk Assessment in accordance with the relevant guidance.”

➤ Chapter 10: Rural Development

“Bórd na Móna has produced a 15-year strategy, Sustainability 2030, which outlines the company’s plan to complete the transition from energy peat production into new sustainable business. The strategy recognises the role and responsibility of Bord na Móna in the rehabilitation of its peatlands to an environmentally sustainable condition with a higher biodiversity value.

The relevant policies in the KCDP 2017-2023 are as follows:

- **BL 1** Ensure that a balanced approach is taken to the development of the county's peat resources and the restoration of cutaway bogs, in order to minimise the negative impact on biodiversity and the archaeological and cultural heritage of the county.
- **BL 2** Seek a balance between the peat extraction potential of the county, whilst ensuring the protection and conservation of bogland habitats. Limiting extraction to those bogland areas currently under development will help to minimise impacts by localising effects and thus protect the bog landscape character areas within the county.
- **BL 3** Take a balanced approach to the redevelopment of cutaway bogs recognising their significant landscape, environmental and heritage value. Future development should seek to conserve cutaway bogs and maximise their potential for wildlife, biodiversity, conservation and amenity in the first instance, whilst the potential for economic uses such as grassland, forestry and renewable energy in some circumstances is acknowledged, subject to the protection of the environment and landscape character.
- **BL 4** Liaise with Bord na Móna, the Irish Peatland Conservation Council, Coillte and the National Parks and Wildlife Service of the Department of Housing, Planning, Community and Local Government to ensure the sustainable use of cutaway bogland, with due consideration given to their ecological and amenity value.
- **BL 5** Seek a Hydrological Report which will also incorporate Flood Risk Assessment in accordance with the Planning Guidelines "The Planning System and Flood Risk Management (2009)" for significant developments within boglands, so as to ensure that the quality of ground or surface water is assessed and mitigation measures identified. This assessment should address the issue of ground and slope stability.
- **BL 6** Support the development of the peatlands within the county for appropriate alternative uses, subject to environmental considerations and nature designations.
- **BL 7** Recognise the potential and support the appropriate development of eco-tourism developments based on the unique characteristics and biodiversity of bogland in Kildare.
- **REO 4** Ensure that all new developments and practices do not undermine rural ecosystems, landscapes and conservation areas and are conducted in a manner consistent with the protection of the local environment and in line with national legislation and relevant guidelines."

The KCDP 2017–2023 adopts a balanced policy framework regarding boglands and former peat extraction sites. It recognises the environmental sensitivity of peatlands in relation to flood risk, biodiversity, hydrology, and landscape character while also supporting their transition toward sustainable alternative uses. The KCDP prioritises environmental protection and ecological restoration as the primary objective for cutaway bogs. However, it simultaneously supports renewable energy and other appropriate economic uses, provided these are environmentally sustainable and supported by robust assessments.

2.3.2.8 Kildare County Development Plan 2011-2017

The Kildare County Development Plan 2011-2017 (KCDP 2011-2017) came into effect 2nd May 2011, replacing the Kildare County Development Plan 2005-2011. Policies related to the historical activities at the Application Site are noted below. The KCDP 2011-2017 promotes a balanced approach to the after-use of cutaway bogs, recognising the transition toward rehabilitation, biodiversity enhancement, and potential eco-tourism. It prioritises conservation of intact boglands and supports appropriate alternative uses for cutaway bogs (such as forestry or wind energy), subject to robust assessments.

Chapter 10 – Rural Development

"Bórd na Móna owns c. 8,500ha of peatlands in the county, representing c.10% of its national landholding.

Bórd na Móna is reviewing its peatlands with a view to developing a comprehensive plan for their future use after the peat production phase. Bord na Móna's Sustainability Report 2008/2009 states that it recognises its role and responsibility in the transition of the peatlands within its guardianship and to

the rehabilitation and after care of such lands to an environmentally sustainable condition with a higher biodiversity value. The potential for eco-tourism based on the unique characteristics of the peatlands and the biodiversity habitats they provide is also being investigated.

The relevant policies in the KCDP 2011-2017 are as follows:

- **BL 1** To ensure that a balanced approach is taken to the development of the county's peat resources and the restoration of cutaway bogs, in order to minimise the negative impact on biodiversity and the archaeological and cultural heritage of the county.
- **BL 2** To seek a balance between maximising the peat extraction potential of the county, whilst ensuring protection and conservation of bogland habitats. Limiting extraction to those bogland areas currently under development will help to minimise impacts by localising effects and thus protect the bog landscape character areas within the county.
- **BL 3** To take a balanced approach to the redevelopment of cutaway bogs. Large portions of cutaway bog should be developed as areas for wildlife, biodiversity, conservation and their amenity value, whilst other portions can be utilised for economic uses such as grassland, forestry and wind energy, subject to all planning and environmental considerations being met.
- **BL 4** To liaise with Bord na Mona, the Irish Peatland Conservation Council, Coillte, National Parks and Wildlife Service of the Department of the Environment, Heritage and Local Government, to ensure the sustainable use of cutaway bogland, with due consideration given to their ecological and amenity value.
- **BL 5** To seek a Hydrological Report which will also incorporate Flood Risk Assessment in accordance with the Planning Guidelines, The Planning System and Flood Risk Management (2009) for significant developments within boglands so as to ensure that the quality of ground or surface water is assessed and mitigation measures identified. This assessment should address the issue of ground and slope stability.
- **BL 6** To support the development of the peatlands within the county for appropriate alternative uses, subject to environmental considerations and nature designations.

Chapter 14 – Landscape, Recreation and Amenities

“It is the policy of the Council:

LL 4: *To recognise that intact boglands are critical natural resources for ecological and environmental reasons.*

LL 5: *To recognise that cutaway and cut-over boglands represent degraded landscapes and/or brownfield sites and thus are potentially robust to absorb a variety of appropriate developments.”*

The KCDP 2011-2017 reflects a shift from peat extraction toward sustainable redevelopment, biodiversity protection, environmental safeguards, and long-term ecological restoration of peatlands.

2.3.2.9 Kildare County Development Plan 2005-2011

The Kildare County Development Plan 2005-2011 (KCDP 2005-2011) was adopted by members of the Council on 18th May 2005 and legally came into effect on 15th June 2005. The importance of the development of peatlands is clear. The Council state that it is an aim of the KCDP 2005-2011 to continue to support the development of peatlands for peat production:

“BL 1 *That in assessing bogland coverage and peat extraction activities within County Kildare, the Council shall seek to identify bogland areas currently under extraction and remnant bogland areas, so as to maximise the peat extraction potential of the county whilst ensuring protection and conservation of bogland habitats. Limiting extraction to those areas*

currently under development will help to minimise impacts by localising effects and thus protect the bog landscape character areas within the County.”

However, the KCDP 2005-2011 also recognises the importance of the conservation and preservation of peatland habitats along with the potential for other peatland uses, such as amenity, educational and research purposes. The Council set a goal to secure at least 4% of the county’s original peatland area for conservation.

Chapter 11 Forestry and Boglands states that *“There are approximately 24,300 hectares (60,045 acres) of land in Kildare covered by bogs, which represents 14% of the total land coverage of the county. 38% of this bogland is in industrial production with the majority (8,277 hectares) being operated by Bord na Móna. A number of bogs in the county are designated SACs, SPAs and proposed NHAs”.*

A key objective of the KCDP 2005–2011 is to *“ensure that a balanced approach is taken to the development of the county’s peat resources and the restoration of cutaway bogs, in order to minimise the negative impact on biodiversity and the archaeological and cultural heritage of the county”.* In support of this goal, the KCDP outlines several specific measures:

- “(1) To promote and facilitate the development of the county’s peat resources in a sustainable manner.*
- (2) To seek the conservation of designated bogs and to protect the bogland landscape character areas within the county.*
- (3) To encourage a balanced approach to the re-development of cutaway bogs.”*

Policies related to the historical activities at the Application Site are noted below.

- **BL 2** *To take a balanced approach to the re-development of cutaway bogs. Large portions of cutaway bog should be developed as areas for wildlife, biodiversity conservation and their amenity value, whilst other portions can be utilised for economic uses such as grassland, forestry and wind energy.*
- **BL 3** *To liaise with Bord na Móna, the Irish Peatland Conservation Council, Coillte, National Parks and Wildlife Service of the Department of the Environment, Heritage and Local Government, to ensure the sustainable use of cut away bogland, with due consideration given to their ecological and amenity value.*
- **BL 4** *To recognise that cutaway boglands represent degraded landscapes and/or brownfield sites and thus are potentially robust to absorb a wide variety of sympathetic developments. It should be noted that they have potential for grass and forestry, however difficulties can arise with crop production.*

Section 18.7.3 of Chapter 18 Landscape Character Areas of the KCDP 2005-2011 deals specifically with the Allen Remnant Bogs. Policies related to the historical activities at the Application Site are noted below.

- **AR 1** *To co-operate with the DOEHLG in the protection and conservation of the Allen Remnant Bog (Mouds Bog) a designated SAC.*
- **AR 2** *To promote, in conjunction with Bord na Móna and the IPCC, the amenity, ecological and educational value of Allen Remnant Bog (Mouds Bog) while at the same time ensuring the conservation of its fauna and flora.*

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

2.3.2.10 Kildare County Development Plan 1999-2005

The Kildare County Development Plan 1999-2005 (KCDP 1999-2005) was adopted in May 1999 and was subsequently amended by several variations, including 1, 2, 3, 4, 6, and 8. The KCDP 1999-2005

adopts a supportive position toward peat extraction, emphasising its role in sustaining employment and facilitating peat-based energy development, subject to environmental designations. It is stated that,

“Employment in agriculture, forestry and turf production, as well as mining and quarrying has fallen to the point where it now accounts for only 14% of total employment. The North-West has seen a marked decline in the peat-based economy in recent years, as a result of rationalisation, chiefly by Bord na Mona and the ESB. Employment in the services sector is now dominant accounting for 54% of total employment in the county”

The importance of the development of peatlands for employment is clear.

“The development of a peat-fired Generating Station adjoining the county (“Europeat 1”) will be of significance to Kildare, not only in terms of employment opportunities for residents of the county but also as most of its raw material will come from the boglands resource of the county. It is important that the Council should facilitate this development, through encouragement of the peat extraction, other than in Natural Heritage Areas and Areas of High Amenity, and in processing the necessary electricity supply distribution network arising from it.”

While the continued industrialisation of peatland was supported, the Council acknowledged the need to develop a plan for the county’s peatland when turf/ peat production comes to an end. Policies within the KCDP 1999-2005 in relation to the historical activities at the Application Site are noted below.

➤ **Part 1 Introduction and Review**

○ **1.23.8 Robertstown Countryside**

The KCDP 1999-2005 recognizes The Robertstown Countryside area as an important recreational and tourism resource, featuring extensive boglands developed by Bord na Móna, canal villages such as Robertstown and Rathangan, natural amenities including Donadea Forest Park, Ballinafagh Lake, the Hill of Allen, and waterways linked to Pollardstown Fen.

○ **1.24 Boglands**

“At present there is a total of 9,000 hectares (20,000 acres) of bogland in the county. Most of this is being or has been worked, by Bord na Mona, although in recent years there has been a small increase in private working of the bogs.

Practically all of the raised bogland in the county has been cut away or is being developed. It is considered important for educational and heritage reasons that at least one intact raised bog area should be preserved in County Kildare because of its location in the east of the county. It is considered that Carbury Bog, because of its international importance as an area of scientific interest and its status as being the most intact of the raised bogs in the East Midlands, should be considered for this preservation.

The after-use of cut away bogs in the Robertstown Countryside area is set out in the preceding section of this Plan. The policy in respect of Boglands generally is set out in paragraph 2.23 of this Plan.”

○ **1.27 Areas of Scientific Interest**

“The county contains many areas of scientific interest, including Pollardstown Fen which is of international importance. Areas of National importance include Carbury Bog, which is of ecological interest, the Chair of Kildare/Grange Hill which is of geological interest, the Curragh, which is of both geological and ecological interest, and the Liffey Valley, which is of geomorphological and ecological interest.

Some of the areas, which were listed in the last Plan, have been designated by the Office of Public Works as Natural Heritage Areas and Special Areas of Conservation. While this will

confer additional protection under national legislation, it is considered that their inclusion in the Development Plan remains warranted on planning grounds.”

➤ Part 2 Policy

○ 2.25 Boglands

“In the case of cut-away bogland, where the peat resource has been depleted, it will be Council policy to encourage the use of these areas for amenity forestry, using a growth of mixed native deciduous woodlands where possible, in line with the policies for the Robertstown Countryside, and in other areas for forestry and agriculture. In cases in which planning permission is required, it will be the policy of the Council to ensure that the creation of tourist and amenity resources will be facilitated and that the quality of ground and surface water will not be impaired.”

○ 2.51.1 Wind Energy

“The Council will encourage the development of wind energy, in accordance with government policy, and in particular will encourage its development in bogland areas and areas of cut-away bog, especially where there are already existing electricity power lines which can be utilised. Such developments will not generally be permitted in Areas of High Amenity, as set out in this Development Plan. Except in such Areas, the assessment of wind energy proposals will have regard to the "Guidelines for Planning Authorities on Wind Farm Development", published by the Department of the Environment, and "Planning Guidelines for Wind Energy", published by the Irish Planning Institute.”

The KCDP 1999-2005 seeks to protect designated and intact boglands of ecological value, while supporting the economic and renewable energy potential of cut-away bog areas.

2.3.2.11 Kildare County Development Plan 1985-1991

The Third Revision of the Kildare County Development Plan 1985-1991 (KCDP 1985-1991) was adopted by the Council in 1985. In relation to employment generated by the peat extraction industry in the county, the KCDP 1985-1991 states,

“The products are sod peat, briquettes and moss peat. Including office staff, there are approximately 1,000 people employed by Bord na Mona in the county.”

Policies within the KCDP 1985-1991 in relation to the historical activities at the Application Site are noted below.

➤ Part 1 – Section 1 Introduction

“Practically all of the raised bogland in County Kildare has been cut away or is being developed. It is considered important for educational and heritage reasons that at least one intact raised bog area should be preserved in County Kildare because of its location in the east of the country. A report to the European Parliament urged the total protection of Carbury Bog in County Kildare because of its National importance as an area of scientific interest and its status as being the most intact of the raised bogs in the East Midlands.

The preservation of the bog is also one of the aims of the Peatland Development Committee founded in 1979 with representatives from A.C.O.T., An Foras Taluntais, I.F.A, National Land League, Macra na Feirme, Forest & Wildlife Service, An Forsa Forbartha and the Farm Development Service.”

➤ Section 2 Policy

“The council recognises the vast amenity and productive potential of the bog areas of the county. The Council will consult with bord na Móna, An Foras Taluntais and other appropriate bodies to ensure that the productive development of the bogland is carried out in such a way as not to prejudice the amenity potential. (Specific anti-amenity activities such as unauthorised dumping will be investigated and eliminated in accordance with extended powers available under the Litter Act, 1982). It is also

Council policy to co-operate with the Peatland Development Committee and other interested bodies in furthering the preservation of Carbury Bog which is described in detail in S.1.26.

Carbury Bog is listed in Section 4 of Part 1 of the Plan as an area of scientific interest, with a rating of national importance together with other bog areas of regional and local interest.”

The KCDP 1985–1991 adopted a policy position that supported the productive utilisation of peatlands across the county, subject to safeguards for amenity value and designated sites of scientific importance.

2.3.2.12 Kildare County Development Plan 1984 (Draft)

Policies within the Draft Kildare County Development Plan 1984 in relation to the historical activities at the Application Site are noted below.

➤ Part 1 – Section 1 Introduction

○ 1.26 Boglands

“Practically all of the raised bogland in County Kildare has been cut away or is being developed. It is considered important for educational and heritage reasons that at least one intact raised bog area should be preserved in County Kildare because of its location in the east of the country. A report to the European Parliament urged the total protection of Carbury Bog in County Kildare because of its National importance as an area of scientific interest and its status as being the most intact of the raised bogs in the East Midlands.

The preservation of the bog is also one of the aims of the Peatland Development Committee founded in 1979 with representatives from A.C.O.T., An Foras Taluntais, I.F.A., National Land League, Macra na Feirme, Forest & Wildlife Service, An Foras Forbartha and the Farm Development Service.”

➤ Section 2 - Development Policy

○ 2.24 Bog Lands

“The Council recognises the vast amenity and productive potential of the bog areas of the county. The Council will consult with Bord na Mona, An Foras Taluntais and other appropriate bodies to ensure that the productive development of the bogland is carried out in such a way as not to prejudice the amenity potential. (Specific anti-amenity activities such as unauthorised dumping will be investigated and eliminated in accordance with extended powers available under the Litter Act, 1982). It is also Council policy to co-operate with the Peatland Development Committee and other interested bodies in furthering the preservation of Carbury Bog which is described in detail in S.1.26.

Carbury Bog is listed in Section 4 of Part 1 of the Plan as an area of scientific interest, with a rating of national importance together with other bog areas of regional and local interest.”

As with the KCDP 1985–1991, the draft KCDP 1984 adopted a policy position that supported the productive utilisation of peatlands across the county, subject to safeguards for amenity value and designated sites of scientific importance.

2.3.2.13 Kildare County Development Plan 1977-1984

The Kildare County Development Plan 1977–1984 (KCDP 1977-1984) acknowledges the historical significance of peatlands within the county, both as a resource for peat production and for their wider land-use potential. The KCDP 1977-1984 sets out the characteristics of different bog types and recognises opportunities for productive use.

Policies within the Kildare County Development Plan 1977-1984 in relation to the historical activities at the Application Site are noted below.

3. Peats:

“Fifteen percent of the total area of the County consists of various peat formations ranging from true fen peat to deep Sphagnum bog. Bogs have a very limited use range, rough grazing and meadows are common but a large amount of the more uneven areas is devoted to forestry.

There appears to be few problems in producing a wide range of crops on cutover bogs where there is a sufficient peat depth left after cutting, while grassland and forestry are potentially good on the shallow cutover areas.

A small area (440 acres) of typical swampy fen peat which occurs at Pollardstown near Newbridge has an extremely limited use - range.”

22. Boglands

“The Council recognises the importance of the boglands as a major natural resource being raw material for power generation and peat production, and also being a major amenity area. At present, extensive research into the use of bog-lands for a variety of purposes, is being carried out.”

2.3.2.14 Kildare County Development Plan 1972-1977

Policies within the Kildare County Development Plan 1972-1977 (KCDP 1972-1977) in relation to the historical activities at the Application Site are noted below.

➤ Part One – (3) Areas of High Amenity

“The following are the major areas of high amenity:

- *The Curragh and its environs.*
- *The Valley of the River Liffey.*
- *The Valley of the River Barrow.*
- *Castletown-Donaghumper area.*
- *East Kildare Uplands. (f) Carton Estate Area.*
- *Pollardstown Fen area.*
- *The Robertstown Area and Ballinafagh Lake.*

It is intended to exclude from these areas, any development which would be prejudicial to their natural beauty and it is proposed to have a selection of these areas specially surveyed with a view to considering in each case whether a special amenity area order should be made and the precise area to be covered by any such order.”

➤ (4) Boglands

“At present research is being undertaken to ascertain the potential use of the boglands. The Council recognises the importance of these areas as a major natural resource and any development that might hinder their future use in the light of present knowledge will be restricted. Anti-amenity activities such as unauthorised dumping will be investigated and eliminated.”

The approach to peatlands in the KCDP 1972-1977 indicates an early balance between resource use and environmental protection.

2.3.2.15 Kildare County Development Plan 1967-1972

The Kildare County Development Plan 1967-1972 (KCDP 1967-1972) states the following in relation to employment in the County.

➤ Part One - Development Policy

○ 1.2 Population and Employment

“Irish Ropes Limited is by far the largest employer in the town; other major employers are, Newbridge Cutlery, Sanderson's, Bord na Mona, Cullen's and Doyle's.”

> Appendix B - Survey Data

○ 3. Employment – (c) Bord na Mona

“The Experimental Station and Central Stores employ about 90 people. The future of this employment will be dependent upon the future of the bogs. It is not expected that there will be any decrease during the period of the plan.”

The KCDP 1967-1972 indicates the significance of BnM and other key employers to local employment at the time, with peat-related activities recognised as providing a stable source of jobs dependent on the continued use of the county’s boglands.

2.3.3

Planning Policy Conclusion

The historic development plans for County Offaly and County Kildare highlight the Application Site's significance as an industrial employment hub and the importance industrial peat extraction for economic growth in the county. This importance was notably emphasised in the OCDP 1967 and KCDP 1967-1972, which underscored that industries like peat extraction were crucial for reducing unemployment caused by increased agricultural mechanisation. In more recent CDP's, there has been a shift in focus from exploiting peatlands for fuel purposes to policies directed at conserving peatland areas following peat extraction to allow for future uses at the bogs. These plans also identified future uses for bogs, such as tourism and wind energy infrastructure, underscoring the ongoing desire to maintain and expand employment in these economically vital areas.

Therefore, it can be concluded that OCC and KCC 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 to preserve the peatland for future uses, such as renewable energy developments.

3.

EXCEPTIONAL CIRCUMSTANCES

It has been established by the Court of Justice of the European Union in Case C-215/06 (*Commission v. Ireland*), that what is now “substitute consent” can only be permitted in exceptional cases. The judgment of the Supreme Court in *An Taisce v. An Bord Pleanála [2020] I.E.S.C. 39* found that Sections 177C(2)(a) and 177D(1)(a) of the Act were inconsistent with the EIA Directive, as interpreted by the Court of Justice, in that they failed to provide adequately for the exceptionality test as demanded by that Court. The provisions of the Act have now been amended to make adequate provision for the exceptionality test⁷.

In considering whether exceptional circumstances exist, subsection 177K(1J) of the Act sets out the matters which must be considered by the Commission, viz.:

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

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

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

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

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

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

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

Having regard to the above, the following section sets out in detail how the exceptional circumstances criteria have been complied with for the subject application. These are set out below, using the above matters under 177K(1J) of the Act as headings to aid the Commission’s consideration of this case.

3.1

(a) Whether the regularisation of the development concerned would circumvent the purpose and objectives of the EIA Directive or the Habitats Directive

In the first instance, it is worth re-iterating at this point (and as detailed in Chapters 1, 2 and 4 of the rEIAR) that industrial-scale peat extraction was on-going within the Application Site prior to 1988, before the transposition of the EIA Directive and Habitats Directive in Ireland, with peat extraction commencing as early as 1935 within the Application Site.

⁷ *Planning and Development and Residential Tenancies, Bill 2020 (December 2020)*

Furthermore, peat extraction benefited from exempted development status up until 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.

The Application Site is located within the boundary of the Long Derries, Edenderry SAC [000925] designated site. Following a precautionary principle, a potential pathway for direct effects on the Qualifying Interest (QI) habitats of this designated site was identified. The potential for the Project to result in indirect effects on this European Site was considered. There is a hydrological connection via the Codd river running through the SAC and application site. However, this site is designated for terrestrial habitats only. Therefore, no potential for impacts due to hydrological or hydrogeological impacts was identified.

Other protected habitats in the vicinity of the site are set out in Table 3-1 below.

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

Designated Site	Distance from Application Site (km)
The Long Derries, Edenderry SAC [000925]	The Application Site overlaps with the boundary of this designated site
Mouds Bog SAC [002331]	5.9 km
Ballynafagh Lake SAC [001387]	6 km
Pollardstown Fen SAC [000396]	7.5 km
Ballynafagh Bog SAC [000391]	7.6 km
River Barrow and River Nore SAC [002162]	9.8 km
River Boyne and River Blackwater SAC [002299]	14.3 km
River Boyne and River Blackwater SPA [004232]	14.3 km
Poulaphouca Reservoir SPA [004063]	26.2km
Lough Ennell SPA [004044]	26.5km
Slieve Bloom Mountains SPA [004160]	27.5km
Lough Owel SPA [004047]	33.8km
Carbury Bog NHA [001388]	4.1 km
Black Castle Bog NHA [000570]	6.2 km
Hodgestown Bog NHA [001393]	7.4 km
Daingean Bog NHA [002033]	14.4 km
Molerick Bog NHA [001582]	15 km

Designated Site	Distance from Application Site (km)
The Long Derries, Edenderry [000925]	The Application Site overlaps with the boundary of this pNHA
Grand Canal [002104]	The Application Site overlaps with the boundary of this pNHA
Mouds Bog [000395]	5.9 km

The following sections outline how BnM 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 1935, with site clearance and drainage at Ballydermot Bog. Draining the surface water from the bogs over a period of years is the essential precursor to peat extraction. The consequence of drainage is dehydration of surface vegetation and changes to the chemistry of surface water resulting in a fundamental change to the nature of the habitats that existed prior to drainage. As drainage took place over a number of years (typically 4 – 7 years), the changes to habitats within the bogs would also have taken place within that timeframe prior to peat extraction, allowing time for resident species to relocate. These changes occurred on all bogs in the Application Site. As set out in Chapter 4 of the rEIAR, drainage works first commenced at the Application Site in 1935.

The Application Site was subject to sod peat extraction from 1950 to 2000. By the 1980s, milled peat, sod moss and sod peat extraction were taking place across most of the Application Site. The closure of the sod peat fuelled power stations made the reorganisation of the drainage at the Application Site necessary. By the late 1980s works were underway to convert the drainage infrastructure in any sod peat producing bogs from sod peat drainage to milled peat drainage. As drainage and clearance works were undertaken by 1988, all drainage works took place prior to the EIA and Habitats Directive being transposed into Irish law.

Silt Committees

As detailed above, the central purpose of the 1985 EIA Directive is preventing the creation of pollution or nuisances at source. Until 1977 and the introduction of the Water Pollution Act there was no statutory regulation of water pollution in Ireland. While there was no legal obligation on BnM 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 BnM 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 BnM 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 Ballydermot Bog, surveys should be carried out and silt pond locations selected. Further details of measures control water pollution are contained in Chapter 4 of the 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 BnM in the absence of any regulatory requirements demonstrates BnM's historic commitments to reduce the impacts of their peat extraction activity on the receiving environment as much as possible.

The outcome of the Silt Committee studies was the provision of silt ponds and revised drainage on all bogs in order to reduce the discharge of silt into streams and watercourses. The concentration levels of effluent discharge were set at 100mg/l suspended solid. This concentration level was based on a decision by then An Bord Pleanála on the licencing of effluent discharge from Littleton Briquette Factory. In summary, the efforts and commitments of BnM 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 EIA or an AA. However, as a robust rEIAR and rNIS has been carried for the subject works, the granting of substitute consent would not circumvent the purpose and objectives of the EIA and Habitats Directive.

IPC Licence

As discussed in detail under Section 2.2 (IPC Licence) of this Report, the Applicant's IPC Licence includes the requirements to prepare and implement an Environmental Management System to reduce and improve environmental emissions through mitigation measures and established best practice and achieve compliance with emission limit values (as regulated by, and agreed with, the EPA). The subject activities undertaken within the Application Site have been reviewed and audited by the competent authority (EPA) and no significant adverse impacts to the receiving environment, including European Designated Sites, have been identified throughout the Applicant's operating regime under this licence.

Summary

The Applicant has fulfilled all statutory and legislative requirements in terms of planning and environmental protection, as outlined above, throughout the decades of peat extraction. In fact, BnM went beyond its statutory obligations by setting up Silt Committees across its network of bogs in 1975 and introducing silt control measures to all bog surface water discharges.

It cannot be the case that the carrying out of exempted development in accordance with planning legislation at the time the works were carried out, would circumvent the purpose and objectives of the EIA & Habitats Directive. It is also submitted that the regularisation of the works would not circumvent these same purposes and objectives, given that a robust rEIAR & rNIS has been carried out, the Applicant has ceased all peat extraction activity and is committed to rehabilitating the Application Site.

A full rEIAR and rNIS accompany this application for substitute consent which provide a comprehensive assessment of the subject works in accordance with the EIA & Habitats Directives. Based on the foregoing it is apparent that regularisation of historic peat extraction would not circumvent the purpose and objectives of the EIA and Habitats Directives.

3.2

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

Historic National Energy Policy

The Turf Development Board Ltd, the precursor to BnM, was created in 1934 with the task of peatland development following earlier governmental commitments in the early 1930s to support private turf

production, establish standards for density and moisture content, fix prices and organise distribution. The Turf (Use and Development) Act was subsequently passed by the Dáil in 1936. One of the more significant provisions of the 1936 Act was Section 22(1) which gave the Minister power to acquire land required for the Turf Development Board's operations (e.g. *'production, the preparation for sale, or the storage of turf, or any purpose ancillary to such production, preparation, or storage'*) by compulsory purchase.

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

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

The increasing demand for electricity in the post-war period indicated that peat production processes would need to be further enhanced and expanded upon to adequately meet national demand. The Turf Development Act 1950, which came into effect in July 1950, contained provisions for the expansion of BnM 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, BnM was notified by the Electricity Supply Board (ESB) that the capacity of a proposed peat-burning power station⁸ at Rhode, Co. Offaly was to be increased from 40MW to 80MW.

In the context of the Application Site, Ballydermot Bog was first drained in 1935 by the Peat Fuel Company Ltd, the owners of the land at that time. Further bog development works pertaining to drainage, buildings, railways, power lines and stores were commenced under the Second Development Programme.

The growing need for resources by the country's electricity generating stations, and the latter oil crisis emerging in the 1970s, highlighted the importance of indigenous fuel resources, and furthermore, BnM'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 BnM'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

⁸ Rhode Power Station, Co. Offaly: Commissioned in 1960 and decommissioned in 2003

30,000 hectares purchased by 1980. The majority of these works related to the extension of its existing operations and the expansion of horticultural peat production.

Following the completion of the Third Development Programme in the late 1980s and in response to a changing domestic and international market regarding, but not limited to, the availability of alternative fuels (i.e. oil and natural gas), private peat production as facilitated by the Private Turf Development Act 1981 and rising production costs, BnM undertook a significant review of its operations, assets and standard procedures in order to both remain viable and continue to develop the nation's natural peat resources. A key outcome arising from this review process was the commitment to secure the continued use of peat within Ireland's energy mix.

Industrial scale peat extraction ceased within the Application Site in June 2020 following the High Court's judgment on *Friends of the Irish Environment Ltd v Minister for Communications, Environment & Climate Action & Ors.* [2019] IEHC 646 (discussed in greater detail in Section 2.1.3 of the rEIAR accompanying this planning application). The High Court set aside the Peat Regulations⁹ 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. BnM 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 1935 has been in accordance with national energy related policy and legislation.

Planning Legislation

Peat extraction activities, which fell within the definition of 'agriculture' with regard to turbary, were classified as exempted development under Section 4(1)(a) of the Local Government (Planning and Development) Act 1963.

Class 17, Part 3 (Schedule 2) of the Planning and Development Regulations (2001) restricted the exempted development status by inclusion of the following:

Class 17 (Part 3, Schedule 2)

- a. Peat extraction in a new or extended area of less than 10 hectares, or*
- b. Peat extraction in a new or extended area of 10 hectares or more, where the drainage of the bogland commenced prior to the coming into force of these Regulations*

This exemption was amended in 2005 by the Planning and Development Regulations 2005 making it conditional on not being subject to an EIA.

The provisions of Class 17 remained relevant to peat extraction activity until the enactment of the Environment (Miscellaneous Provisions) Act (2011) on 20th September 2012, which inserted Section 4(4) into the Planning & Development Act (2000)¹⁰,

"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 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

⁹ S.I. No. 4/2019 – European Union (Environmental Impact Assessment) (Peat Extraction Regulations 2019)

¹⁰ Section 4(4) did not apply to development "completed not later than 12 months after such commencement"

an EIA or an 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 Development Regulations 2001 on 21 January 2002. As mentioned previously, drainage at Ballydermot Bog had commenced in the 1935.

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 EIA 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 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 20th September 2019 on [2019] IEHC 646 ultimately provided the certainty required by the Applicant, and the peat extraction industry, to fully understand the planning status of peat extraction in Ireland. On foot of this decision, the Applicant ceased all industrial scale peat extraction activities on boglands within its ownership, including the Application Site.

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

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

- Industrial-scale peat extraction was on-going within the Application Site prior to 1988, before the required transposition dates of the EIA Directive and Habitats Directive in 1988 and 1994, respectively, with peat extraction commencing in 1960 within the Application Site. These works benefited from exemption up until 20th September 2012 when the Environment (Miscellaneous Provisions) Act 2011 was enacted, and Section 4(4) was inserted within the Act.
- Peat extraction was supported by Government Policy, and fundamental to ensuring a secure supply of energy generation since the First Development Program.
- The implications of Section 4(4) on the peat extraction industry remained ambiguous between 2012 and 2019 as planning cases on peat extraction and EIA/AA were considered and tested within both the planning system (An Coimisiún Pleanála Ref. PL25.RL.2975) and legal system ((Westland Horticulture Limited and Bulrush Horticulture Limited v An Bord Pleanála (2013/398/JR – [2018] IEHC 58)).
- The ‘Peatland Regulations’ (January 2019) which attempted to provide further clarity on this issue (e.g. exemption from planning permission for large scale peat extraction activity (30ha or over) were ultimately quashed by the High Court ([2019] IEHC 646 - September 2019) on the grounds that the legislation was inconsistent with the requirements of the EIA Directive and the Habitats Directive.
- In the interim, the Applicant had proceeded with industrial scale peat extraction in line with the conditions of its IPC licence. On foot of the [2019] IEHC 646, the Applicant ceased peat extraction on boglands within its management, including the Application Site, and dutifully proceeded to prepare and lodge an application seeking leave to apply for substitute consent (June 2020) for the relevant works within the Allen Bog Group (including the Application Site) with the intention of continuing said works into the future.
- The Applicant lodged an application for substitute consent for the relevant peat extraction works to the Commission (SU19.307279) on 2nd June 2020. Peat extraction ceased (prior to July 2020) when it was confirmed that peat extraction could not re-commence prior to the Commission’s decision on SU19.307279.
- The Applicant formally announced in January 2021 that all industrial scale peat extraction on lands within its management would permanently cease. As such, SU19.307279 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. P0503-01) 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 1935 and has operated under its IPC Licence (Ref. P0503-01) since 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;
- Offaly County Council and Kildare County Council (letters dated 31st May 1999) to be notified; and
- The application to be placed on public display at the EPA's offices from the date of receipt of the application until 2 months after the licence was granted.

Pursuant to this licence, the Applicant is permitted to carry out the extraction of peat in the course of business which involved an area exceeding 50 hectares. The extant IPC Licence contains 14 no. conditions relating to operation and monitoring, emissions to water and air, water protection, waste management and bog rehabilitation. The licence sets emission limit values which are subject to ongoing monitoring by the Applicant to ensure licence compliance as well as regulatory oversight and enforcement by the EPA. The Applicant has also been audited and inspected, in relation to compliance with the conditions of its IPC Licences by the EPA (as the competent authority). The Applicant is required to submit an Annual Environmental Report (AER) to the EPA each year (prior to 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

BnM produce periodic Biodiversity Action Plans for which open engagement was carried out annually with a range of stakeholders at the annual BnM Biodiversity Action Plan review days between 2010-2018. The most recent Biodiversity Action Plan was launched by BnM 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 website¹¹) 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 P0503-01, as well as any reports of non-compliance, incidents, contamination events, and licence audits carried out by the EPA, are also available for public review via the EPA's web portal (<https://leap.epa.ie/licence-profile/P0503/compliance>). This facility provides further opportunities for the public to participate within the on-going management of the Applicant's licensed operations and associated assessments.

As outlined previously a 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 1935. 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:

¹¹ <https://www.epa.ie/who-we-are/contact-us/>

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

The River Barrow and River Nore SAC (Site Code: 002162) is located approx. 9.7km southwest of the Application Site. This SAC is located downstream and downgradient of the Application Site. The River Boyne and River Blackwater SAC (Site Code: 002299) and SPA (Site Code: 004232) are located approx. 14km to the north of the Application Site. This SAC/SPA is downstream of the Application Site along the River Boyne. However, it is noted that there is no surface water outfall from the bog within this catchment. The Application Site is hydrologically linked with the River Barrow and River Nore SAC, The Long Derries, Edenderry SAC/pNHA and the Grand Canal pNHA.

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% for stormwater and 99% - 100% for wastewater has recently been achieved for 2025. As mentioned previously, BnM 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.

It is of note that these monitoring procedures precede the date of designation of the River Barrow and River Nore SAC (2002) and the Long Derries, Edenderry SAC/pNHA (2016), and succeeds the Grand Canal pNHA (1995). As such, measures have been put in place and have been evolving and improving responsively to monitoring output (e.g. Environmental Monitoring System) and EPA enforcement for the protection of water quality since the time of the IPC licensing.

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

It has been demonstrated earlier in this report that BnM 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 BnM'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. P0503-01) 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 Barrow and River Nore SAC in 2002 and the Long Derries, Edenderry SAC/pNHA in 2016. The Grand Canal pNHA was designated prior to the Applicant's IPC licence in 1995.

Licence conditions prescribed by the EPA are intended for the protection, and where possible, the improvement of the environment and apply from the time of grant of the licence. The EPA has

undertaken Technical Amendments of the licence in 2012 for the purpose of aligning the operational conditions of the licence to the objectives of National and European environmental protection legislation enacted over the lifetime of the licence, and specifically to bring into the compliance the Licence with the provisions of the *European Communities Environmental Objectives (Surface Water) Regulations, 2009*, the *Waste Management (Management of Waste from the Extractive Industries) Regulations*, and the *European Communities Environmental Objectives (Groundwater) Regulations, 2009*.

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

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

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

- **6.13:** *The licensee shall trend the monitoring results for total ammonia and determine any statistically significant relationship that exists between the results and the current status of each bogland (virgin, under development, operational or worked out), rainfall, silt pond control measures or other factors. The licensee shall report annually as part of the AER on the trends and on any statistically significant relationship identified.*

Under Condition 10 of the IPC Licence (Ref. P0503-01), 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 (refer Condition 10.2). 10.2 Cutaway Bog Rehabilitation Plan: 10.2.1 The licensee shall prepare, to the satisfaction of the Agency, a fully detailed and costed plan for permanent rehabilitation of the cutaway boglands within the licensed area. This plan shall be submitted to the Agency for agreement within eighteen months of the date of grant of this licence.*
 - **10.2.2** *The plan shall be reviewed every two years and proposed amendments thereto notified to the Agency for agreement as part of the*

AER. No amendments may be implemented without the written agreement of the Agency.

- **10.3** *The Rehabilitation Plan shall include as a minimum, the following:*
 - **10.3.1** *A scope statement for the plan; to include outcome of consultations with relevant Agencies, Authorities and affected parties (to be identified by the licensee).*
 - **10.3.2** *The criteria which define the successful rehabilitation of the activity or part thereof, which ensures minimum impact to the environment.*
 - **10.3.3** *A programme to achieve the stated criteria.*
 - **10.3.4** *Where relevant, a test programme to demonstrate the successful implementation of the rehabilitation plan.*
 - **10.3.5** *A programme for aftercare and maintenance.*
- **10.4** *A final validation report to include a certificate of completion for the Rehabilitation Plan, for all or part of the site as necessary, shall be submitted to the Agency within six months of execution of the plan. The licensee shall carry out such tests, investigations or submit certification, as requested by the Agency, to confirm that there is no continuing risk to the environment.*

The discharge of Condition 10 will facilitate rehabilitation of the Application Site in conjunction with any parallel future uses (such as wind energy infrastructure). Accordingly, it is anticipated that significant effects on the environment can be remediated.

3.6

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

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

The Applicant has never been the subject of any actual or threatened 'Section 160' enforcement action from Offaly County Council or Kildare County Council concerning development undertaken by the Applicant at the Application Site.

3.7

(g) Such other matters as the Commission considers relevant

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

There is very little ambiguity remaining with regard to the climate change emergency occurring both within Ireland and at a broader global scale. Met Éireann's Annual Climate Statement 2025¹² reflects on clear and distinct impacts arising from climate change effects within an Irish context. The average annual air temperature for Ireland in 2025 was 11.14 °C, which is 1.59°C above the 1961-1990 long-term average (LTA) or 0.97°C above the most recent 1991-2020 LTA. Ireland's overall warming trend continues in line with the global warming trend.

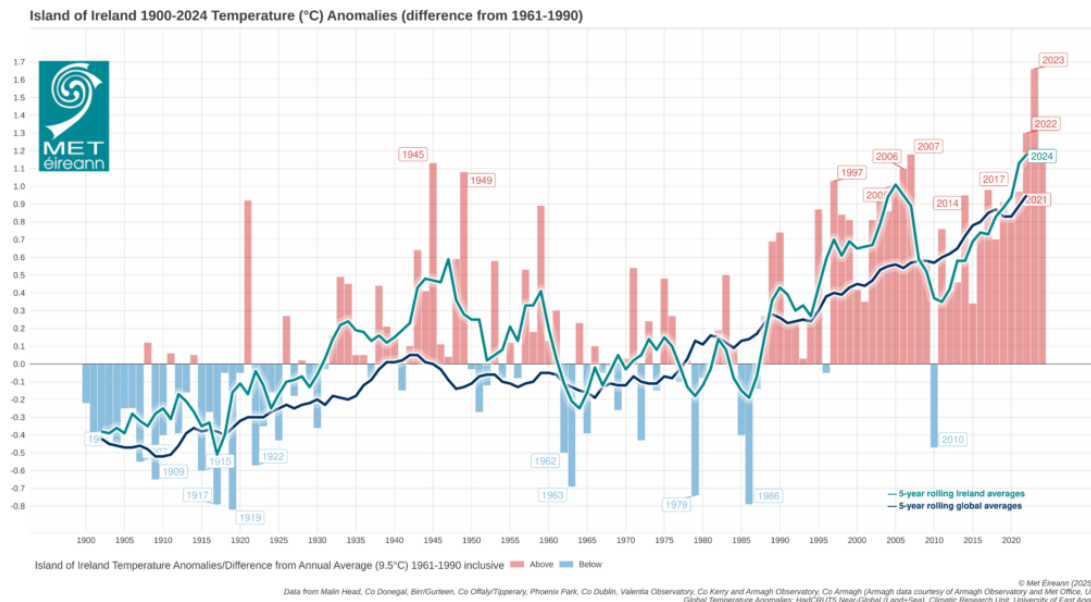


Figure 3-1: Island of Ireland annual average temperature anomalies (1961-1990 Long-Term Average) 1900 to 2024 (Source: Met Éireann)

The reduction of emissions is a key proponent of the enacted Climate Action and Low Carbon Development Act 2015, as amended, ('the Climate Act') which aims to achieve a climate neutral economy by no later than 2050, and a 51% reduction in greenhouse gas emissions by 2030. These objectives have been translated into the Climate Action Plan 2025 (CAP 25), 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.

Additionally, Section 15(1) of the Climate Act requires relevant bodies to, in so far as practicable, perform their functions in a manner consistent with:

- a. the most recent approved climate action plan,
- b. the most recent approved national long term climate action strategy,
- c. the most recent approved national adaptation framework and approved sectoral adaptation plans,
- d. the furtherance of the national climate objective, and
- e. the objective of mitigating greenhouse gas emissions and adapting to the effects of climate change in the State.

¹² Annual Climate Statement for 2025 (MET Éireann, January 2026), Available at: <https://www.met.ie/ga/annual-climate-statement-for-2025>

This requirement of relevant bodies has been subject to scrutiny in the Irish legal system, with the Supreme Court delivering judgment in *Coolglass Wind Farm Limited v An Coimisiún Pleanála* [2026] IESC 5 on 4th February 2026.

It is considered that should the Commission grant substitute consent in respect of peat extraction and ancillary activities at the Application Site, they would be acting in a manner consistent with plans, policies and objectives as defined in Section 15(1) of the Climate Act. Industrial peat extraction ceased at the Application Site in 2020. Since that time, a programme of decommissioning and rehabilitation works has been implemented in line with the Applicant's IPC Licence. The key objective of these measures is achieving environmental stability. Additionally, rehabilitation measures will optimise ecosystem service benefits of peatland rehabilitation and restoration, particularly carbon storage and reducing carbon emissions. This will also benefit biodiversity and water (e.g. water quality and catchment management).

The Application Site is an important natural asset and has the potential to play a strategic role in meeting national climate action targets, which have become all the more significant in light of the Climate Act, the CAP 25, the Climate Change Performance Index 2025, and the Change Advisory Council's Annual Report 2025. These reports provide an updated assessment of both global climate change and climate change in the context of Ireland and identify the increasingly discernible impacts climate change is having on both the environment and society. In line with the Applicant's vision to assist in achieving a climate neutral Ireland by 2050, it is intended to utilise the Application Site for both peatland rehabilitation and wind energy infrastructure. The regularisation of the planning status of the Application Site via a granting of substitute consent is a critical component to delivering this important future development and crucially ensuring that the Application Site delivers the maximum climate and environmental benefits possible for the Irish State.

4.

CONCLUSION

This Planning Report has been prepared in support of an application for substitute consent made by Bord na Móna Biomass Limited in order to regularise, without prejudice, the planning status of historic peat extraction and ancillary works carried out within the Application Site located in County Offaly and County Kildare. This application for substitute consent is made pursuant to updates to the legislation around substitute consent which allows for a single stage application process and removes the need for leave to apply from the Commission.

In this regard, Section 177K(1A)(a) of the Act requires that in any given case An Coimisiún Pleanála must be satisfied that exceptional circumstances exist that would justify the grant of substitute consent. This report, and the supplementary documentation that form part of this application, set out the specific circumstances underpinning the Applicant's case which, in our opinion, demonstrates the required exceptionality to permit the Applicant an opportunity to regularise, without prejudice, the subject peat extraction completed at the Application Site by substitute consent. This opinion is based on a number of key considerations, summarised as follows:

- The Applicant has fulfilled all statutory and legislative requirements in terms of planning and environmental protection, as outlined above, throughout the decades of peat extraction. In fact, BnM 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 P0503-01 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 rEIA 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. No incidents or contamination events have been recorded at the Application Site. Across all water monitoring parameters recorded since 1999 (COD, pH, Ammonia, Ortho-phosphate, Suspended Solids), the Application Site has achieved a rate of compliance of between 99% and 100% between 1999-2025. BnM's proactive measures, such as the establishment of Silt Control Committees in 1975, have effectively mitigated potential impacts on nearby areas.
- The discharge of Condition 10 will facilitate rehabilitation of the Application Site in conjunction with any parallel future uses (such as wind energy infrastructure). Accordingly, it is anticipated that significant effects on the environment can be remediated.
- The Applicant has never been the subject of any actual or threatened 'Section 160' enforcement action from Offaly County Council or Kildare County Council in relation to Application Site concerning development undertaken by the Applicant.
- The Draft Cutaway Bog Decommissioning and Rehabilitation Plan outlined as part of this application is compatible and can be integrated with the development of the Application Site for future uses to benefit both the climate and the economy.

With regard to the above, it is submitted that exceptional circumstances do exist with regard to the works carried out at Application Site. As such, it is respectfully requested that An Coimisiún Pleanála grant substitute consent for the subject works.

