

Lisa Quinn  
Executive Officer  
An Bord Pleanála,  
64 Marlborough Street  
Dublin 1

**By Email & Post**

29<sup>th</sup> September 2021.

**Re: ABP 310546-21 Whether or not the industrial extraction of peat at Baltrasna Bog, Mullingar, Co. Westmeath is development or is or is not exempted development.**

**Our client: Friends of the Irish Environment**

Dear Ms. Quinn,

I refer to your correspondence of 09 September 2021 enclosing correspondence from McCann FitzGerald solicitors on behalf of their client Sara Corcoran, The Downs Mullingar, Co. Westmeath.

Our client's referral in this matter pursuant to s.5 of the Planning and Development Act, 2000, as amended, was submitted to Westmeath County Council on the Planning Authority's own application form and described the development for which a s.5 declaration was sought as "*Industrial extraction of peat on a site of over 30 hectares*". Enclosed with the completed form was the requested '*site location map clearly outlined in red*'.

I am instructed that a pattern of closely spaced 'ditching' on the surface of the peat extraction area can be seen clearly on the said map, which was prepared from a Google Maps satellite image. The site location map submitted by our client also included, for the convenience of the planning authority, the centre co-ordinates of the site and a calculation of the area that is being drained by the said close ditching, measured by our clients to be 37 hectares.

Accordingly, the planning authority received from our client, pursuant to s.5(a) of the Act, the information "*necessary to enable the authority to make a decision on the matter*". Had this not been the case, the planning authority could have issued a request for further information under s.5(2)(b) of the Act.

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principals:

Aoife O'Connell BCL LL.M

Órla Clarke LL.B

Notwithstanding s.5(1), a planning authority may, on payment to the Board of such fee as may be prescribed, refer any question as to what, in any particular case, is or is not development or is or is not exempted development to be decided by the Board. The fact that the planning authority exercised its absolute discretion in this case pursuant to s.5(4) to refer the matter to An Bord Pleanála does not mean that the planning authority did not have the information necessary to enable it to make a decision.

We are instructed that the information supplied by our client on the location map submitted to Westmeath County Council is all that is needed to enable the planning authority or the Board to consult the various public GIS tools that are used routinely by both bodies when considering the planning or development history of a site. As you are aware, these Ordnance Survey of Ireland aerial photography available online for the periods 1995, 2000, 2005, between 2005 and 2012, and the Aerial Premium series captured between 2013 and 2018. I am instructed that the Water Framework Directive (WFD) mapping tool of the Environmental Protection Agency available through [www.catchments.ie](http://www.catchments.ie) is frequently accessed by planning inspectors when compiling their reports and conveniently links locational mapping to catchment water body quality assessments prepared by the Agency.

Our client has consulted these resources, using the same locational information provided by it to Westmeath County Council, and has prepared screenshots of the bog as it appears on 2021 Google Maps satellite imagery (by which time the bog has been fully ditched), in OSI aerial photography captured at a date between 2013 and 2018 (by which time the present intensified ditching had commenced) and OSI photography from 2005 and 2000 (before the intensification of drainage by close ditching commenced). The EPA's map of Water Framework Directive river waterbodies in the vicinity was also accessed. We believe that the Planning Authority and the Board may have already used the locational map provided by our client to consult these resources themselves in the usual manner, nonetheless we enclose herewith at Appendix I screenshots from the same exercise conducted by our client.

As the Board's Inspector has probably already seen, the mapping on the EPA's [www.catchments.ie](http://www.catchments.ie) website shows that the waterbody closest to the peat extraction site (bounding it in fact) is the Riverstown\_01 river waterbody. As you are aware, the EPA in their mapping links waterbodies to the relevant sub catchment assessment which in this case your Inspector has probably already identified as the sub catchment assessment for Boyne\_SC\_040 updated to 2018 which states that the Riverstown\_01 river waterbody is under significant pressure from peat extraction and is at risk of not attaining its Water Framework Directive objectives. In the circumstances we believe there is sufficient information before the Board

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to enable it to form the opinion that an Environmental Impact Assessment is necessary for this activity, regardless of the area involved.

In any event, it is our client's position that an EIA is mandatory for this activity pursuant to Schedule 5 Part II of the Planning and Development Regulations, 2001, as amended. The site location map submitted by our client indicates an area of 37 hectares. We are instructed by our client that this refers only to the area of high bog that has been closely ditched in recent years. Access roads, drains and peat storage areas are additional to this area. As you are aware, the trigger of 30 hectares for mandatory EIA relates to "Peat extraction which would *involve* a new or extended area of 30 hectares or more" and is not merely the area of bog which the developer claims to be extracting from at any one time. Our client's position is that the peat extraction activity at Baltrasna Bog very clearly *involves* an area of 30 hectares or more. Accordingly, if this activity ever was exempted development, which is denied, the requirement for EIA negates any exemption. (See *Bulrush Horticulture Limited v An Bord Pleanala* [2018] IEHC 58.)

It seems to us that the issues raised by McCann FitzGerald about change of use are answered by their own letter. Their client relies on turbary rights to claim that peat extraction has occurred at this site prior to 1 January 1964. The appurtenant right of turbary for fuel attaches to the land of a dwelling house (see the facts of *re Bohan* [1957] 1 IR). Without prejudice to the absence of any proof of turbary within the McCann FitzGerald correspondence, the fact that occupiers of individual dwelling houses may have been granted rights to cut turf for their own dwelling as far back as 1910 is not comparable in any way to the mechanised industrial extraction use that is the subject of this s.5 reference. It is for the Board to decide if the change of use from the cutting of turf for domestic use under turbary rights attached to a dwelling, to industrial scale abstraction of peat, is an intensification of use such that it is development that is subject to the Planning and Development Act, 2000, as amended and not exempted development.

We have inferred from the McCann FitzGerald correspondence that their client claims ownership of the bogland in question; however, we note that it has not been denied that Mr Leonard of Garbally, Blueball, Co. Offaly also has a legal interest in the land.

Yours faithfully,

*O'Connell & Clarke*

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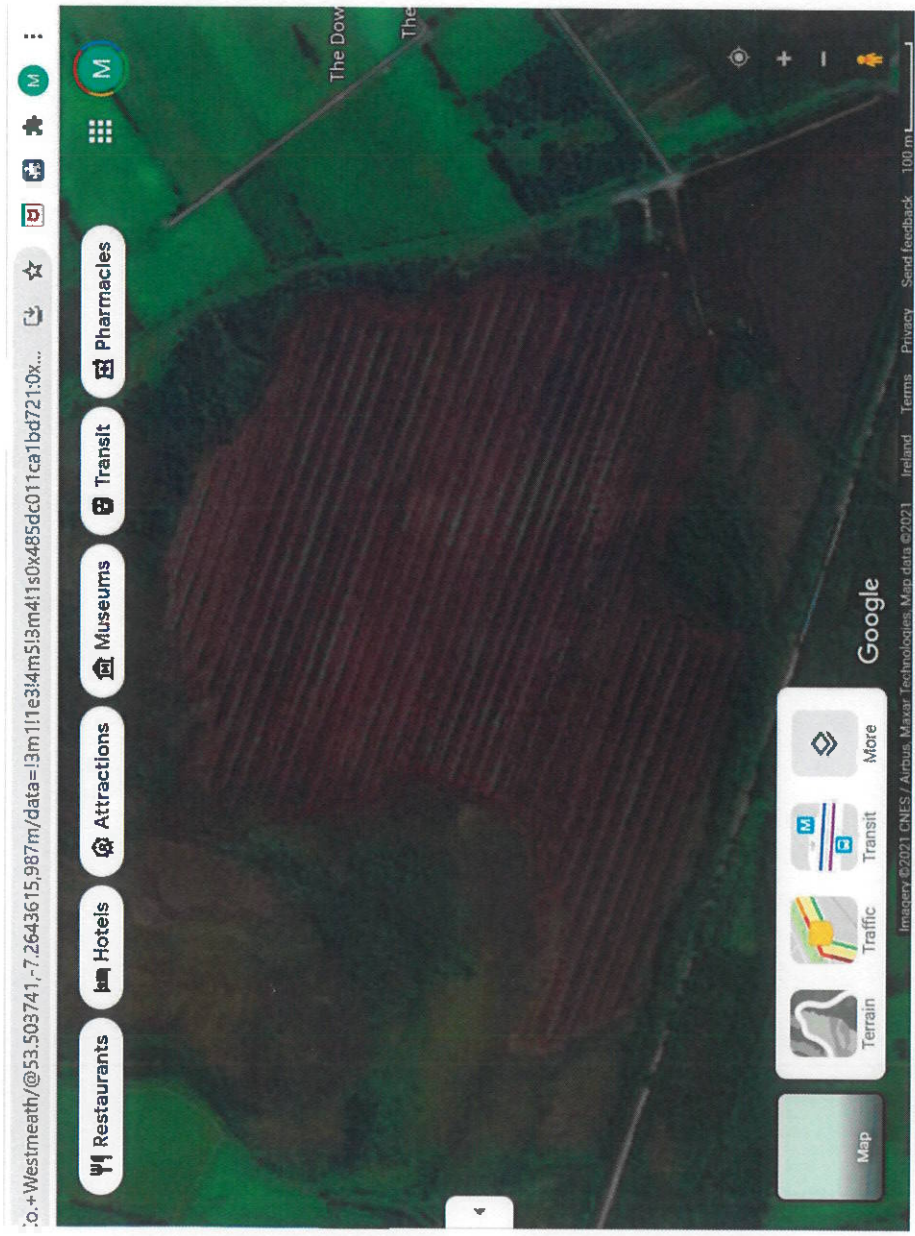
Baltrasna Bog, Co Westmeath

Baltrasna Bog extraction area - 37 ha  
Site Centre ITM: E 649147.895, N 750626.354

Legend  
Baltrasna Bog Extraction Area







Google Maps 2021





← → ↻ ⚡ Not secure | map.geohive.ie

GeoHive

Home About Gallery Catalogue Help/FAQ Fullscreen

Search addresses, eircodes, layers, coordinates...

GEORHIVE MAP

Base Information and Mapping

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- Aerial Premium
- Aerial 2005-2012
- Aerial 2005
- Aerial 2000
- Aerial 1995
- Digital Globe 2011-2013

Selection

Aerial Premium  
Transparency

Close Menu

0 0.15 0.3km

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Ordnance Survey Aerial Premium captured between 2013 and 2018



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**GeoHive**

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GEOHIVE MAP

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- Aerial 2005-2012
- Aerial 2005
- Aerial 2000**
- Aerial 1995
- Digital Globe 2011-2013

▼ Selection

- Aerial 2000

Transparency

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0 0.15 0.3km

649124.083, 750079.438

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Ordnance Survey of Ireland captured 2000 [www.geohive.ie](http://www.geohive.ie)





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- Aerial 2005** ⓘ
- Aerial 2000 ⓘ
- Aerial 1995 ⓘ
- Digital Globe 2011-2013 ⓘ

▼ Selection

Aerial 2005 ⓘ

Transparency

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Ordnance Survey of Ireland captured 2005



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**GeoHive**

Home About Gallery Catalogue Help/FAQ Fullscreen

Search addresses, eircodes, layers, coordinates ...

GEOHIVE MAP

648076.458, 750055.625

0 0.15 0.3km

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- Aerial 2005-2012**
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Selection

Aerial 2005-2012

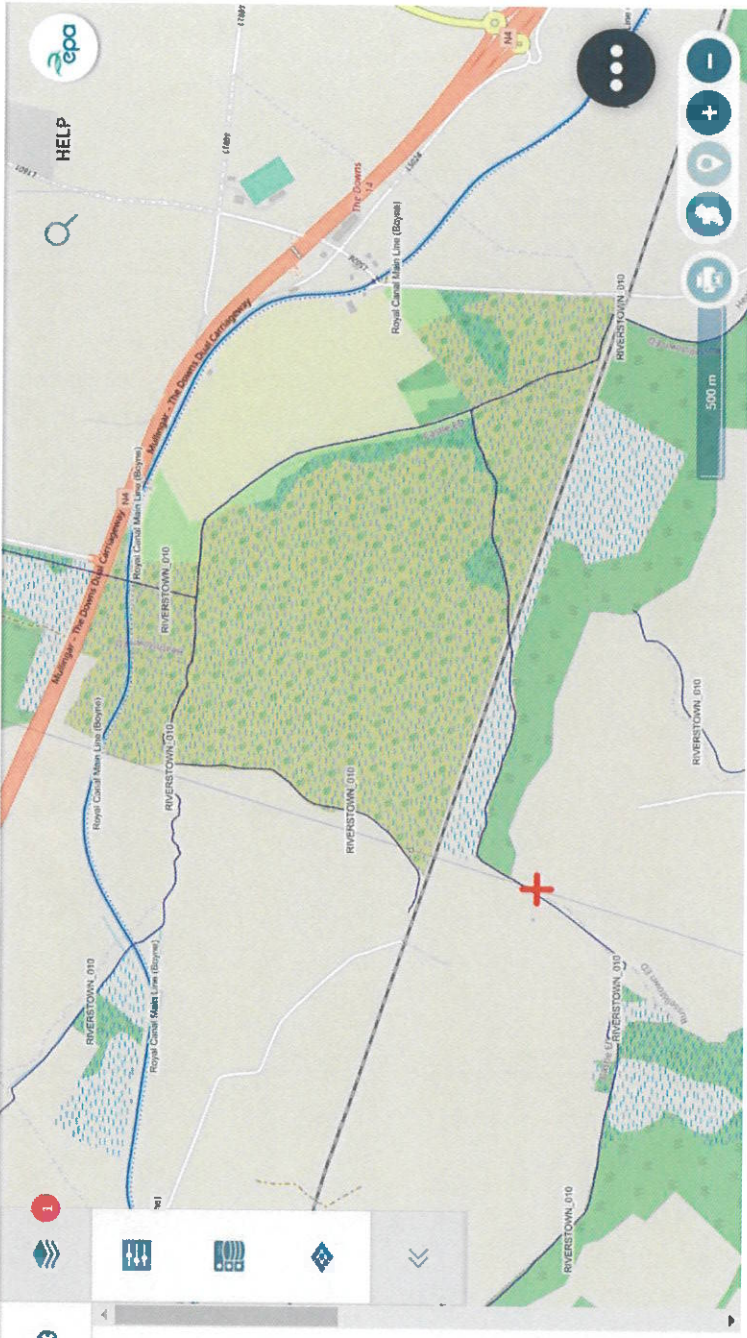
Transparency

Close Menu

Ordnance Survey of Ireland captured between 2005 and 2012







Results

Keep Previous Results

River Waterbodies

IE_EA_07R010090	
EU_CD	IE_EA_07R010090
NAME	RIVERSTOWN_010
URL	<a href="#">View the Data Page</a>
MS_CD	EA_07R010090
REGION_CD	17
INS_WHEN	2014-11-12T00:00:00Z
BASIN_CD	159 Boyne
LAT	53.52800663
LON	-7.23838619
LENGTHKM	53.18242232
SUB_CD	07_9
DateChanged	2019-11-18T00:00:00Z
Change	Rivers updated
GEOLOGY	3



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<b>AN BORD PLEANÁLA</b>	
LDG- _____	
ABP- _____	
<b>30 SEP 2021</b>	
Fee: € _____	Type: _____
Time: _____	By: <u>post</u>

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órla clarke LL.B



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We have inferred from the McCann FitzGerald correspondence that their client claims ownership of the bogland in question; however, we note that it has not been denied that Mr Leonard of Garbally, Blueball, Co. Offaly also has a legal interest in the land.

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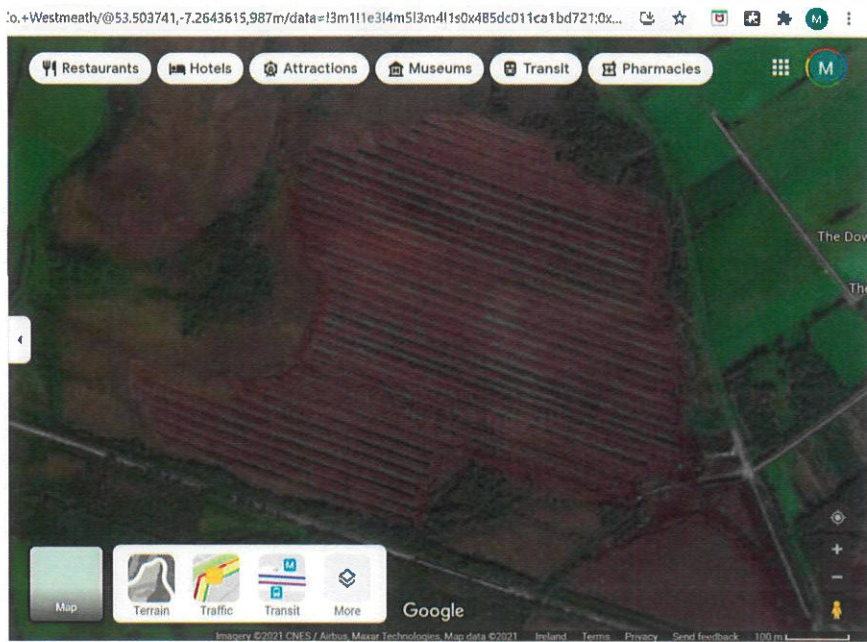
ólga clarke LLB











Google Maps 2021



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📁 Base Information and Mapping

- GeoHive Map ⓘ
- Aerial Premium ⓘ
- Aerial 2005-2012 ⓘ
- Aerial 2005 ⓘ
- Aerial 2000 ⓘ
- Aerial 1995 ⓘ
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▼ Selection

🔍 Aerial Premium ⓘ

Transparency

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0 0.15 0.3km 650398.794, 751362.669

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Ordnance Survey Aerial Premium captured between 2013 and 2018



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- Aerial 2005-2012 ⓘ
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#### ▼ Selection

- Aerial 2000 ⓘ
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📄 Base Information and Mapping

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- Aerial 2005 ⓘ
- Aerial 2000 ⓘ
- Aerial 1995 ⓘ
- Digital Globe 2011-2013 ⓘ

▼ Selection

Aerial 2005 ⓘ

Transparency

🔒 Close Menu



0 0.15 0.3km 640080.687, 710055.025

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Ordnance Survey of Ireland captured 2005



The screenshot displays the GeoHive web application interface. On the left, a 'Data Catalogue' sidebar is open, showing a list of layers under 'Base Information and Mapping'. The 'Aerial 2005-2012' layer is selected and checked. Below this, a 'Selection' section shows the 'Aerial 2005-2012' layer with a 'Transparency' slider. The main map area shows an aerial view of a rural landscape with fields and a road. The bottom of the map includes a scale bar (0 to 0.3km), coordinates (649070.458, 750055.625), and copyright information: © 2017 Ordnance Survey Ireland, © Digital Globe, and Site Usage Policy.

Ordnance Survey of Ireland captured between 2005 and 2012.



gls.epa.ie/EPAMaps/Water

Water

WATER, LAND & SOIL | PROTECTED AREAS | MONITORING & FLOW | STATUS & RISK | PRESSURES & ACTIVITIES | TAKING ACTION

Results

Keep Previous Results

**River Waterbodies**  
IE\_EA\_07R010090

EU_CD	IE_EA_07R010090
NAME	RIVERSTOWN_010
URL	<a href="#">View the Data Page</a>
MS_CD	EA_07R010090
REGION_CD	17
INS_WHEN	2014-11-12T00:00:00Z
BASIN_CD	159 Boyne
LAT	53.52400693
LOX	-7.23896619
LENGTHKM	53.16247232
SUB_CD	07_9
DateChanged	2019-11-18T00:00:00Z
Change	Rivers updated
GEOLOGY	3

[www.catchments.ie](http://www.catchments.ie)

