The Regulatory Framework Applying to Peat Extraction - A Guidance Document

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This guidance document (The Guide) has been commissioned by the Department of the Environment, Climate and Communications and the National Parks and Wildlife Service.

The Guide is intended to provide any interested party with information regarding the regulatory framework (primarily that aspect which relates to the Planning System) which applies to peat extraction at the time of publication, January 2022.

The Guide addresses the differing regulatory requirements which apply to peat extraction at specific thresholds (in terms of hectarage), the relevant application and appeals processes, and the opportunity/requirement for public participation in the consent process.

The Guide has been prepared for information purposes only. It is not, and does not purport to be, a legal interpretation of the relevant regulatory requirement which currently apply to peat extraction. Any person intending to pursue legal action in relation to peat extraction is advised to obtain legal advice on the matter and should not rely on the contents of this Guide

Purpose and Scope of the Guide

The purpose of this guidance document (The Guide) is to inform stakeholders of the current Planning and Licensing regulatory systems in place in the State for peat extraction developments.

The Guide sets out in practical, non-technical terms, the processes and procedures involved in the making of applications for planning permission and licensing for peat extraction projects. It also indicates the criteria used by planning authorities/An Bord Pleanála and the Environmental Protection Agency in deciding such applications and the rights of the public to participate in the decision-making processes, including the right to appeal and/or to challenge a decision by way of Judicial Review to the High Court. While the main section of the Guide focuses on the Planning regulatory system, licensing processes and procedures (which are only applicable to projects in excess of 50 ha) are addressed in Appendix 1. The Guide includes tables indicating the regulatory requirements for new and extended peat extraction areas, and for various scenarios which may arise in existing peat extraction areas.

European Directives often have an important role in the planning and licensing consent processes. Of particular importance are the Environmental Impact Assessment Directive (EIA)[1], the Habitats Directive[2], and the Water Framework Directive[3]. The Guide addresses circumstances in which the provisions of these Directives must be incorporated into the making and consideration of consent applications. It is beyond the scope of the guide to give detailed information in relation to the preparation and content of Environmental Impact Assessment Reports (EIARs) and Natura Impact Statements (NISs). Consideration should be given to seeking professional advice before making a consent application in circumstances where any such report and/or statement may be required.

Environmental Impact Assessment (EIA) is mandatory for proposed peat extraction projects which would involve a new or extended area of 30ha. or more, and any planning application for such development must be accompanied by an Environmental Impact Assessment Report (EIAR). There is a requirement for proposed projects exceeding 50ha to obtain both planning permission, and licensing consent from the Environmental Protection Agency (EPA), and applications for both must be accompanied by an EIAR. All applications for planning permission and licensing consent, are likely to require screening for both Environmental Impact Assessment (EIA) and Appropriate Assessment (AA). The Guide addresses peat extraction projects of less than 10 ha, 10-30 ha, 30-50 ha, and over 50ha

[1] Directive 2011/92/EU, as amended by Directive 2014/52/EU
[2] Directive 92/43/EEC
[3] Directive 2000/60/EC.

where planning permission may be required and where consideration must be given to the provisions of relevant European Directives. Where a proposed peat extraction project is likely to have an impact on a waterbody, the provisions of the Water Framework Directive must be considered.

The Guide is set out under the following broad headings:

- **Peat extraction current regulatory controls (overview)**
- **The Planning regulatory system**
  - Definition of development
  - Exempted development
  - Obligation to obtain planning permission
  - Peat extraction and Environmental Impact Assessment (EIA)
  - Peat extraction and Appropriate Assessment (AA)
- **Section 5 procedures**
  - Declarations
  - Procedures for requesting a declaration
  - Referrals to An Bord Pleanála
  - Considerations in deciding requests
- **Planning permission procedures**
  - Pre-application consultations
  - Procedures for making a planning application
  - Considerations of a Planning Authority/An Bord Pleanála
  - Types of decision and conditions
  - Indicative timescale for application process
  - Duration of a planning permission
  - Public participation in the application and appeal processes
  - Right to appeal
  - Types of decision possible
  - Indicative timescale for the appeal process

Appendix 1: **The Licensing regulatory system**

Appendix 2: **Note on Substitute Consent provisions**

Appendix 3: **Note on Judicial Review process**

The issue of enforcement under both the planning and licensing regulatory systems is outside the scope of the Guide.

This Guide does not purport to be a legal interpretation of the relevant regulatory systems which currently apply to peat extraction activities. It is intended as a practical guide for relevant stakeholders involved in or having a particular interest in the business. Any person intending to pursue legal action in relation to any peat extraction activity is advised to obtain legal advice on the matter and should not rely on the contents of this Guide.

Peat Extraction Current Regulatory Controls (Overview)

Scope of controls

Peat extraction, other than existing authorised developments and activities, is controlled generally through the provisions of the Planning and Development Act 2000, as amended (The Planning Act). For large scale activities (activities involving in excess of 50 hectares) a licence from the Environmental Protection Agency (EPA) is also required[4].

Under Section 32 of the Planning Act planning permission is required for any development which is not "exempted development"

Under Part IV of the Environmental Protection Agency Act 1992 (the EPA Act), a licence from the EPA is required for any activity, other than an "established activity", as defined in that Act, listed in the First Schedule. There was, however, provision for what were defined as "established activities" in the Act being brought within the licencing system. Class 1.4 of the activities listed refers to "the extraction of peat in the course of business which involves an area exceeding 50 hectares". In regulations made under the EPA Act some "established activities ", including "the extraction of peat in the course of business which involves an area exceeding 50 hectares" were brought within the licencing system[5].

Table 1 below sets out in broad terms the current regulatory requirements for any new peat extraction proposal. Table 2 sets out the possible likely requirements for existing peat extraction areas which do not have the benefit of a valid planning permission covering the existing activities on the site. There are many different scenarios possible and the table merely provides some typical examples. Each case must, however, be considered on its unique circumstances and the scenarios listed are generalised. The dates given in Table 2 are the dates on which different exempted development regimes came into effect or the

[4] Part IV of the EPA Act
[5] S.I. No. 460 of 1998

requirement for EIA or AA altered, and consequently the requirement for planning permission altered. The Table does not attempt to take account of any differences which may have existed at any time between the requirements of EU Directives and the Irish transposition of such Directives. The tables are based on domestic legislation only.

Table 1 sets out the current requirements for new or extended areas for peat extraction.

Scale of Proposal	Requirement
Site less than 10ha. or where drainage commenced prior to 21 January 2002 and none of the de-exemptions in the Act or Regulations apply	Planning permission is not required
Site less than 10ha. or drainage commenced prior to 21 January 2002 and any of the de-exemptions in the Act or Regulations e.g., EIA or AA apply.	Planning permission is required and, where applicable, EIA and/or AA is required in the process
Site of 10ha. or over or drainage works did not commence prior to 21 January 2002	Planning permission is required and, where applicable, EIA and/or AA is required in the process
Site of 30ha. or more	Planning permission and EIA are required and, where applicable, AA is also required
Site exceeding 50ha.	Planning permission and licensing (from EPA) are required, EIA and, where applicable, AA required in both processes.

Table 2 sets out requirements in Established Peat Extraction Areas where there is no existing planning permission specifically covering the existing activity

Scenario	Requirement
1. Extraction commenced prior to 1 October 1964 and no subsequent material change of use i.e., works are a continuation of works commenced prior to 1 October 1964	Planning permission not required. Such development did not require planning permission under the 1963 Planning Act and is not unauthorised development as defined in the 2000 Act. This authorisation is not dependent on any exemption given in the 1963 or 2000 Planning Acts or the Planning Regulations

2. Extraction commenced prior to 1 October 1964 but material change of use occurred in area of 50ha or more prior to 1 February 1990 and prior to 21 January 2002 in areas of less than 50ha	No planning permission required for continuation, unless development (which includes works) carried out after 20 September 2012 required EIA or AA. If EIA or AA required, then planning permission is required. Substitute consent would be required to regularise status of any development carried out after 20 September 2012.
3. Extraction commenced after 1 October 1964 and no subsequent material change of use through intensification or otherwise, or any such material change in an area of 50ha. or more occurred prior to 1 February 1990, and for areas less than 50ha prior to 21 January 2002 i.e., activity is a continuation of pre-1 February 1990 development for area of 50ha. or more and pre-21 January 2002 development for areas less than 50ha.	No planning permission is required (Section 265 of the 2000 Planning Act) for continuation unless development (which includes works) carried out after 20 September 2012 required EIA or AA. If EIA or AA required, then planning permission required. Substitute consent would be required to regularise the status of works carried out after 20 September 2012.
4. Extraction commenced after 1 February 1990 and prior to 21 January 2002, in area less than 50ha and no subsequent material change of use through intensification or otherwise after 20 January 2002 i.e., activity is a continuation of pre 21 January 2002 activity.	No planning permission is required for continuation of use unless development (which includes works) carried out after 20 September 2012 required EIA or AA. If EIA or AA required, then planning permission required. Substitute consent would be required to regularise the status of development carried out after 20 September 2012.
5. Extraction commenced after 1 February 1990 and prior to 21 January 2002 in area of 50ha or more	Planning permission and EIA was required. If planning permission was not obtained, development is unauthorised and may not be continued. Substitute Consent would be required

	to regularise the status of the development already carried out and planning permission would be required for the continuation of the extraction
6. Extraction commenced without planning permission on or after 21 January 2002, in a new or extended area less than 10ha., or in an area of 10ha or more where drainage of the lands had commenced prior to 21 January 2002	This was exempted development and, as such, no planning permission was required if none of the de-exemption provisions of the Act or Regulations (both as amended at the time of commencement of the peat extraction) applied. If any of the de-exemptions did apply, planning permission was required e.g., the 2001 Regulations, which came into effect on 21 January 2002 stated in Article 9 that development to which Part 10 of the Regulations applied was not exempt. Any development for which EIA was required was, accordingly, not exempted and required planning permission. Screening for EIA would accordingly be required to determine if this scenario was exempted development. If development (which includes works) carried out after 20 September 2012 required EIA or AA, the development was not exempted. If EIA or AA was required, then planning permission was required. Substitute consent would be required to regularise the status of development carried out after 20 September 2012.
7. Extraction commenced without planning permission on or after 21 January 2002 in an area of 10ha or more, or in an area of 10ha. or more where the drainage of the lands had not commenced prior to 21 January 2002.	There was no exemption for such development and, as such, planning permission was required. To regularise the situation a Substitute Consent would be required for the completed development and planning permission would be required for the continuation of the development

8. Extraction commenced without planning permission on or after 8 September 2011, in a new or extended area of less than 10ha., or in an area of 10ha or more where the drainage of the lands had commenced prior to 21 January 2002.	This was exempted development and, as such, no planning permission was required if none of the de-exemption provisions of the Act or Regulations (both as amended at the time of the commencement of the peat extraction) applied. If any of the de-exemption provisions did apply, planning permission was required e.g., the 2011 Regulations, which came into effect on 8 September 2011, stated in Article 9 that any development for which AA was required or which would have an adverse effect on a Natural Heritage Area (NHA) as designated under the Wildlife Act was not exempted development. Any development for which an EIA or AA was required was not exempted development. Screening for EIA and AA would, accordingly, be required to determine if this scenario was exempted development. It would also have to be determined if the development would have an adverse effect on any NHA. In the event of the development not having been exempted, Substitute Consent for development carried out and planning permission for the continuation of extraction would be required in order to regularise the situation and continue extraction. If development (which includes works) carried out after 20 September 2012 required EIA or AA, that development was not exempted. If EIA or AA were required, then planning permission was required. Substitute Consent would be required to regularise the status of works carried out after 20 September 2012.
9. Development commenced prior to 21 September 2011 and completed	Development is exempted development and accordingly planning permission is not required.

prior to 21 September 2012 unless, immediately before 21 September 2011 the development was being carried on in contravention of the Planning Act of 2000 or Regulations under that Act.	
10. Any development (including works) carried out after 20 September 2012, for which planning permission (with EIA and/or AA where required) has not been granted and which required EIA or AA	Planning permission with EIA and/or AA is required. Substitute consent would be required to regularise the status of any development carried out after 20 September 2012. Planning permission would be required for resumption or continuation of extraction.

There are some broad similarities in the planning and licensing systems but there are also some differences between the two regulatory systems. The broad similarities and differences are set out in this section but the details of the two systems are set out elsewhere in the Guide.

In the case of the larger peat extraction projects i.e., those involving in excess of 50ha both regulatory systems apply. Planning permission and a licence from the EPA are required for such projects. There is some overlapping of the duties and responsibilities of the regulatory authorities in such cases. The legislation contains some provisions to rationalise such overlapping and to clarify the scope of duties/responsibilities of the relevant authorities. The main provisions on this issue are referred to in this section.

Similarities in planning and licensing systems

- Both systems require the submission of applications and the receipt of consent from a designated regulatory authority in accordance with procedures set out in detail in regulations made under the relevant acts.
- The regulatory authority in each case considers the application in accordance with the criteria set out in the relevant code.
- The regulatory authority in both codes may grant or refuse a licence or planning permission with or without conditions.

- There are enforcement provisions in both codes to ensure that developments are not carried out or activities carried on except in accordance with the planning permission or licence.
- The regulatory authority in each case must give reasons for its decisions and for conditions imposed in decisions to grant planning permission or a licence.
- Provisions for the implementation of the EU EIA and Habitats Directives are specifically provided for in both regulatory codes. The regulatory authorities must also have regard to the EU Water Framework Directive in fulfilling their functions under the legislation in both codes.
- The processes and procedures adopted and followed by the regulatory authorities in both codes are subject to judicial review by the High Court.

Differences between planning and licensing systems

- The planning control system is essentially a once off consent for a development to take place or be carried out. The EPA licensing system is essentially a control or the on-going operation of the activity.
- The nature of the conditions imposed differ due to the differences set out above. Conditions in a licence emphasise to a much greater extent the need for on-going monitoring and reporting to the EPA.
- Conditions in a licence may be reviewed and modified in various circumstances. This does not apply to conditions in a planning permission except in very limited circumstances.
- The licensing system allows for the revocation of a licence in specified circumstances whereas the revocation of a planning permission is only possible in limited circumstances prior to the works commencing or in very limited circumstances prior to such works being completed.
- A planning permission applies to the land to which the permission relates whereas a licence inures to the licensee. There is provision in the EPA Act for the transfer of a licence to another person subject to the agreement of the EPA and a licence may cease or be terminated.
- It is a requirement of the EPA Act that the licensee be a “fit and proper person”. Such a requirement does not apply in the planning legislative code although there is some provision, in limited circumstances, for refusing planning permission on the basis of an applicant’s past performance

Clarification of duties/functions when overlapping of responsibilities of regulatory bodies

The EPA Act stipulates that when an application is made to the Agency for a licence for an activity that involves development for which planning permission is required, the applicant must submit confirmation to the Agency that there is a current application for permission with the planning authority or with An Bord Pleanála or, alternatively, must submit a copy of the relevant grant of permission, together with a copy of any EIAR submitted with the application or notification from the planning authority or An Bord Pleanála stating that such EIAR was not required[6]. The Agency must refuse to consider any application which does not comply with these requirements and shall so inform the applicant.

Section 99F of the EPA Act is of particular relevance in clarifying the responsibilities of the authorities where there is an overlap of responsibility. Where a licence or revised licence under part IV of the EPA Act has been granted 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 in respect of any development comprising or for the purposes of the activity, subject the permission to conditions which are for the purposes of controlling emissions from the operation of the activity, including the prevention, elimination, limitation, abatement, or reduction of those emissions, or controlling emissions related to or following the cessation of the operation of the activity.

Where a licence or revised licence under Part IV of the EPA Act is granted in relation to an activity and a permission under section 34 of the Planning Act or a substitute consent, as defined in Section 177T of the Planning Act, has been granted in respect of the same activity or in relation to development for the purposes of it, any conditions attached to that permission shall, so far as they are for the purposes of the prevention, elimination, limitation, abatement or reduction of emissions to the environment, cease to have effect[7].

The EPA Act defines “emission” basically as being any direct or indirect release of substances, heat or noise from individual or diffuse sources in the activity into the atmosphere, water or land[8].

Section 99F of the EPA Act also states, however, that where a licence or revised licence under this Part IV of that Act has been granted or is or will be required in relation to an activity, a planning authority or An Bord Pleanála may, in respect of any development

[6] Section 87(1B) of the EPA Act
[7] Section 99F(9) of the EPA Act
[8] Section 3 of the EPA Act

comprising or for the purposes of the activity, decide to refuse a grant of permission under the Planning Act, where the authority or An Bord Pleanála considers that the development, notwithstanding the licensing of the activity under Part IV of the EPA Act, is unacceptable on environmental grounds or on the grounds of adverse effects on the integrity of a European site (as defined in the Planning Act) having regard to the proper planning and sustainable development of the area in which the development is or will be situate.

The planning legislation requires that where a planning application is made for a development which comprises or is for the purposes of an activity for which an integrated pollution control licence from the EPA is required, the planning authority shall take into consideration that the control of emissions from the activity is a function of the Environmental Protection Agency[9].

There is also provision in the EPA Act to require a licensee to carry out some development which would be necessary to comply with the licence but for which planning permission has not been obtained or applied for. Subject to compliance with the consultation procedure set out in the EPA Act such development becomes exempted development for the purposes of the Planning Act. The EPA may, however, impose any condition required by the planning authority or a stricter condition[10].

The Planning Regulatory System

Definition of Development

'Development', as defined in the Planning Act 2000 as amended, means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land[11].

'Works' are defined in the Planning Act as including any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure[12].

[9] Section 34(2)(2) of the Planning Act.
[10] Section 86(8) of the EPA Act.
[11] Section 3 of the Planning Act
[12] Section 2 of the Planning Act

Intensification of an existing use may be deemed to be a material change in use.

The extraction of peat involves works and, as now established in Court decisions, may also involve a material change of use and, as such, constitutes development as defined in the Planning Act[13]. A material change of use can arise from a change from agriculture to use for peat extraction or from an intensification of the peat extraction use.

Exempted Development

The Planning and Development Regulations 2001, as amended[14] (the Planning Regulations) refer to classes of development which are exempted from the requirement to obtain planning permission, subject to a number of specified restrictions. Class 17 of the Planning Regulations[15] relating to rural areas comprises the following under the heading of 'Peat Extraction':

(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.

The Planning Regulations came into force on 21st January 2002.

Restrictions may apply and have the effect of 'de-exempting' what would otherwise be exempted development. If a proposal for peat extraction requires an environmental impact assessment (EIA) or an appropriate assessment (AA) it cannot be exempted development and, as such, there is a requirement to obtain planning permission[16]. If the proposal consists of or comprises development which would be likely to have an adverse impact on an area designated as a natural heritage area (NHA) by order made under the Wildlife (Amendment) Act 2000, there is a requirement to obtain planning permission[17]. Other restrictions that may apply are set out in the Planning Regulations[18]. For instance, if the proposal would interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of the development plan, a proposed

[13] See judgment of Mr. Justice Meenan in Bulrush and Westland v An Bord Pleanála (2013 No.398 J.R. and 2013 No.424 J.R.).
[14] Planning Regulations 20
[15] Class 17 of Schedule 2 Part 3 of the Regulations
[16] Section 4(4) of the Planning Act.
[17] Article 9 (1) (viiC) of the Planning Regulations
[18] Article 9 of the Planning Regulations

variation of the development plan or pending in the making of a new development plan in a draft of that plan, it shall not be exempted development[19].

Obligation to obtain Permission

There is a general obligation to obtain planning permission in respect of the development of land, not being exempted development, and in the case of development which is unauthorised, for the retention of that unauthorised development[20].

Development for which planning permission is required cannot be carried out other than in accordance with a permission granted under Part III of the Planning Act[21]. There is an obligation to obtain planning permission for development involving the extraction of peat, unless such development is exempted development.

Peat Extraction and EIA

Peat extraction is a class of development included in annexes to the EIA Directive[22]. Irish Regulations transposing the EIA Directive require that EIA must be carried out for peat extraction projects, which would involve a new or extended area of 30 hectares or more[23].

An EIA must be carried out by the planning authority (and An Bord Pleanála on appeal) in respect of an application for permission for proposed development which is of a class specified in either Part 1 or Part 2 of Schedule 5 of the Planning Regulations, where the proposed development would equal or exceed any threshold specified in those Parts[24].

In the case of peat extraction projects involving a new or extended area of less than 30 hectares (sub-threshold development), the planning authority (and An Bord Pleanála where relevant) must 'screen' the project to determine if there is a likelihood of significant effects on the environment arising from the proposed development. Where the planning authority determines that there would be such a likelihood, it will request the applicant to prepare and submit an EIAR.

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[19] Article 9(1)(vi) of the Planning Regulations
[20] Section 32(1) of the Planning Act
[21] Section 32(2) of the Planning Act
[22] Peat extraction, where the surface of the site exceeds 150 hectares is listed in Annex I requiring mandatory EIA, and peat extraction on sites less than150 hectares must be subject to a determination by the competent authority, on a case-by-case basis or subject to thresholds, as to whether or not EIA is required.
[23] Schedule 5, Part 2, 2(a) of the Planning Regulations
[24] Section 172 of the Planning Act

Where EIA is required, the application for permission must be accompanied by an environmental impact assessment report (EIAR). An EIAR must be prepared by 'competent experts'[25] who must be listed in the report[26]. Where an application must be accompanied by an EIAR, it is recommended that professional advice be sought in respect of the preparation of the report.

In the case of applications for proposed sub-threshold projects, unless it can be concluded by the planning authority/An Bord Pleanála (ABP) on preliminary examination that there is no real likelihood of significant effects on the environment, a screening determination must be made[27]. In order to make a screening determination, the planning authority/ABP must have access to adequate information relating to the description of the proposed development, aspects of the environment likely to be affected, and a description of any likely significant effects[28]. Where this information is not submitted with the application for permission, the planning authority/ABP must require the applicant to submit the required information to enable a screening determination to be made[29]. A screening determination must be made within 8 weeks of the receipt of all of the relevant information, although this period may be extended in exceptional circumstances.

A key consideration in determining if EIA procedures should apply, is the relationship between a proposed development and its location. It should be noted that even small-scale projects can be determined to have significant effects on the environment if very sensitive environmental factors are likely to be affected.

It should be noted that proposed peat extraction cannot be split into a number of applications for permission (project splitting) for the purpose of avoiding the requirement of mandatory EIA. In the case of peat extraction, a multiplicity of applications cannot be made for the purpose of keeping the overall extent of the development below the 30ha threshold, and so avoiding the mandatory requirement for EIA.

An application for outline planning permission is not permissible if EIA or Appropriate Assessment is required in relation to the proposed development.

A planning authority must refuse to consider an application to retain unauthorised development of land where it decides that if an application for permission had been made in

[25] Article 5(3)(a) of the EIA Directive and Section 172(1B) of the Planning Act
[26] Article 94(e) of the Planning Regulations
[27] Section 172(1)(b)(ii) of the Act and Articles 103(1)(b) and 109(2)(b)(i) of the Planning Regulations
[28] Schedule 7A of the Planning Regulations
[29] Articles 103(1)(b)(ii) and 109(1)(b)(ii) of the Planning Regulations

respect of that development before it was commenced it would have required EIA, a determination as to whether EIA is required, or an appropriate assessment[30].

Peat Extraction and Appropriate Assessment

European sites (otherwise known as Natura 2000 sites) are designated under the Habitats and Birds Directives[31] and are located throughout the country. They include Special Areas of Conservation (SACs) and Special Protection Areas (SPAs). Candidate SACs and Candidate SPAs are also included in the Irish legislation[32]. Each European site is designated for specific reasons (qualifying interests) and have conservation objectives. It is a requirement under the Habitats Directive that any plan or project not directly connected to or necessary to the management of a European site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, must be the subject to appropriate assessment of its implications for European sites in view of their conservation objectives[33]. A proposed project cannot be permitted if it is likely that it would have an adverse effect on the integrity of a European site except where there are imperative reasons of overriding public interest (IROPI).

Unlike the EIA Directive, the requirements of the Habitats Directive are not limited to specified classes of development. As such, peat extraction projects must be considered in accordance with the provisions of the Habitats Directive, unless the extraction is directly connected to or necessary to the management of a European site.

In preparing a planning application for peat extraction, attention should be given to the proximity to European sites, their qualifying interests and conservation objectives. The radius for such assessment of impact on European sites will depend on the scale of the project proposed, the connectivity of the proposed site to its surrounds, and to the nature and sensitivity of the qualifying interests for which the European site is designated. The most likely pathway for effects arising from a peat extraction project is a hydrological connection, although dust and noise, transported by air, may also be significant factors. Where there is a direct hydrological connection between the proposed site and a European site, and there is the possibility of significant effects arising for the qualifying interests of that designated site, it should be assumed that Appropriate Assessment under the provisions of the Habitats Directive will be required. It should be noted that screening for Appropriate Assessment

[30] Section 34(12) of the Planning Act
[31] Directives 92/43/EEC and 2009/147/EC
[32] Section 177R of the Planning Act
[33] Article 6(3) of Directive 92/43/EEC

cannot take account of any mitigation measures proposed (unlike screening for EIA) in determining the likelihood of significant effects. If the likelihood of significant effects cannot be discounted by the competent authority based on objective information, an Appropriate Assessment will be required and an applicant will be required to submit a Natura Impact Statement (NIS) to the planning authority. Where an application must be accompanied by an NIS, it is recommended that professional advice be sought.

Section 5 Procedures

Declarations

Where a question arises as to what is or is not development, or is or is not exempted development in a particular case, any person may request a declaration from the relevant planning authority on that question[34]. In other words, any person proposing to carry out a project or any person concerned about a particular development or proposed development may request the planning authority for the area concerned, to give a written declaration indicating whether the proposed project is or is not development within the meaning of the Planning Act and, if it is development, whether or not it is exempted development and, if exempted development, not subject to the requirement for planning permission.

Procedures for Requesting Declarations

The question put to the planning authority must relate to a specific proposed development on a specific site. The question must be put in writing and must be accompanied by the prescribed fee (Euro 80 at present but this should be checked before the question is put).

A planning authority may require the submission of a completed Section 5 form and this can usually be downloaded from its website.

In addition to the question submitted, the request must also be accompanied by any information necessary to enable the planning authority to make its decision on the matter. For instance, if the question relates to an intensification of use, precise details should be provided relating to both the nature and scale of the existing or previous use and the intensified use.

[34] Section 5(1) of the Planning Act.

There is no requirement for a requester to publish either newspaper or site notices in the case of a request for a Section 5 declaration.

The planning authority is required to make its declaration within 4 weeks of the date of the request[35], other than in specified exceptional circumstances relating to the nature, complexity, location or size of the project. However, the planning authority may request the submission of further information if such is required and, in this event, the planning authority must make its declaration within 3 weeks of the satisfactory receipt of the further information[36].

Referrals to An Bord Pleanála

Where the planning authority issues a declaration, any person issued with the declaration may refer the matter to An Bord Pleanála for review within 4 weeks of the date of the issuing of the declaration by the planning authority. This referral must be accompanied by the appropriate fee (Euro 220 at present but should be checked before the referral is made).

Where a request is made for a declaration to the planning authority, and the authority fails to issue a declaration within the specified period, the requester may refer the matter to An Bord Pleanála within 4 weeks of the date that the declaration was due to issue. This referral to An Bord Pleanála must be accompanied by the prescribed fee. The planning authority may also refer the matter to An Bord Pleanála rather than issuing a declaration itself.

Considerations

A Section 5 request is determined solely on the basis of whether or not the project in question constitutes development and, if it does constitute development, does it or does it not constitute exempted development. If it is not development there is no requirement for planning permission. If it is declared as development but exempted development, there is no requirement for planning permission.

Where a request relates to an intensification of use, the physical implications of the intensification on the surrounding environment will be considered.

[35] Section 5(2)(a) of the Planning Act
[36] Section 5(2)(b) of the Planning Act

Where the planning authority or An Bord Pleanála consider that the development in question is likely to give rise to significant effects on the environment and EIA is required, or likely to have significant effects on any European site, having regard to its conservation objectives and Appropriate Assessment is required, the development cannot be deemed to be exempted development[37].

It should be noted that the planning authority, in the case of a request for declaration, or An Bord Pleanála in the case of a referral, will not consider the planning merits of a proposal in the context of the proper planning and sustainable development of the area. Such consideration is undertaken at planning application stage.

Planning Permission Procedures

Pre-application consultations

Any person who has an interest in land and who intends to make a planning application may, with the agreement of the planning authority concerned, enter into consultations in order to discuss a proposed development on the land and the planning authority may provide advice regarding the proposed application[38].

The planning authority cannot reasonably withhold agreement to such consultations.

Advice provided by the planning authority will relate to the procedures involved in considering a planning application, including the requirements of the permission regulations, and will, as far as possible, indicate the relevant objectives of the Development Plan which may have a bearing on the decision of the planning authority[39].

A written record of any such consultations, or request for consultations, will be kept and placed on any subsequent planning application file[40].

Pre-application consultations can provide the prospective applicant with useful guidance on the making of an application and the considerations likely to be important in deciding such

[37] Section 4(4) of the Planning Act
[38] Section 247 of the Planning Act
[39] Section 247(2) of the Planning Act
[40] Section 247(5) of the Planning Act

an application. However, they cannot be relied upon in the formal planning process, which is open to public participation before a decision on an application is made.

Planning application procedures

Details of the procedures involved in the making of an application for planning permission are contained in Chapter 1 of Part 4 of the Planning Regulations (S.I. 600 of 2001).

Considerations of a Planning Authority/An Bord Pleanála

When making its decision in respect of a planning application under Section 34 of the Planning Act, the planning authority (and An Bord Pleanála in considering an appeal under Section 37) is restricted to considering the proper planning and sustainable development of the area, regard being had to:

- The provisions of the development plan
- Any Ministerial Guidelines issued under Section 28 of the Planning Act
- The provisions of any special amenity area order (SAAO) relating to the area
- Any European site or other site prescribed for the conservation and protection of the environment
- The policy of the Government or any Minister of Government
- Conditions that may be imposed on any permission granted
- Previous developments by the applicant that have not been satisfactorily completed
- Previous convictions against the applicant for non-compliance with the Planning Act, the Building Control Act 2007 or the Fire Services Act 1981
- Any other relevant provision or requirement of the Planning Act and any Regulations made thereunder[41]
- Where it considers that a particular decision may have a significant effect on the area of another planning authority, the planning authority must consult with that other planning authority and have regard to its views, and have regard to the effect that a particular decision by it may have on any area outside its area (including areas outside the State)[42]

[41] Section 3492(a) of the Planning Act.
[42] Section 34(2)(b) of the Planning Act

The planning authority will have regard to the application documentation and any submissions or observations made by other persons or bodies in accordance with the regulations.

Types of decisions and conditions

The planning authority may decide to grant planning permission with or without conditions, or refuse to grant planning permission[43].

In any case where EIA is required the planning authority and An Bord Pleanála where relevant must, as part of the EIA process, come to a reasoned conclusion on the significant effects on the environment of the development and this reasoned conclusion must be integrated into the decision[44]. There are also some specific requirements which must be contained in the notification of decisions of a planning authority or An Bord Pleanála in cases where EIA is required. The notification of the planning decision must contain a statement to the effect that the authority considers that the reasoned conclusions on the significant effects of the development on the environment is up to date at the time of the decision in cases where EIA is required[45]. The information made available to the applicant and the public must include an evaluation of the direct and indirect effects of the development on the environment and information for the public on the procedures available to review the substantive and procedural legality of the decision[46].The planning authority must also publish a notice of its decision in a newspaper or electronically inform the public of the right to appeal or seek judicial review of its decision, The notice must identify where practical information on the appeal and review mechanisms are to be found[47].

In any case where AA is required the planning authority and An Bord Pleanála, where relevant, must make a determination under Article 6.3 of the EU Habitats Directive as to whether or not the development would adversely affect the integrity of a European site. This must be done prior to the decision on the application. The authority must give notice of and reasons for its determination to the applicant[48]

[43] Section 34(1)(a) of the Planning Act
[44] Definition of EIA in section 171A of the Planning Act
[45] Section 34(10)(c)(ii) of the Planning Act
[46] Section 172(II) of the Planning Act
[47] Section 34(1A) of the Planning Act
[48] Section 177V of the Planning Act

Conditions that may be imposed are wide ranging and examples are set out in Section 34 and the Fifth Schedule of the Act. These include, but are not confined to conditions relating to the following:

- Regulating the development or use of any land which adjoins, abuts or is adjacent to the land to be developed and which is under the control of the applicant, where the planning authority considers that it is expedient for the purposes of or in connection with the development authorised by the permission, or appropriate where any aspect or feature of the land adjoining, abutting or adjacent constitutes an amenity for the public or section of the public, for the purposes of conserving that amenity, and where the imposition of the condition would not unduly burden the person in whose favour the permission operates
- The carrying out of works (including the provision of facilities) considered by the planning authority to be required for the purposes of carrying out the development
- Requiring the taking of measures to reduce or prevent noise or vibration which might give reasonable cause for annoyance for specified persons
- Requiring landscaping of land
- Requiring the giving and maintaining of adequate security for satisfactory completion of proposed development
- Requiring the payment of a financial contribution for public infrastructure benefitting the development
- Determining the sequence and timing in which works are to be carried out
- Requiring the maintenance and management of the proposed development
- Requiring points of detail to be agreed with the planning authority
- Regulating the hours and days of operation
- The protection and conservation of the environment including the prevention of environmental pollution and the protection of waters, groundwater, the seashore and the atmosphere[49]
- Measures to reduce or prevent the emission or the intrusion of noise or vibration
- Relating to the protection of features of the landscape which are of major importance for wild fauna and flora
- Relating to the conservation and preservation of natural habitat types in Annex I of the Habitats Directive, or species in Annex II if the Habitats Directive which the site hosts, contained in a European site, species of bird or their habitat or other habitat

[49] Subject to restrictions imposed by Section 99F of the EPA Act, in cases where licensing also required.

contained in a European site specified in Article 4 of the Birds Directive, which formed the basis of the classification of that site

- Preserving any existing public right of way
- Preservation of the landscape in general, including views and prospects and amenities of places and features of natural beauty or interest

Indicative timescale for permission process

Subject to the application being made in accordance with the regulations and all requirements of the regulations are complied with, a planning authority must make its decision within a period of 8 weeks beginning on the date of receipt by the planning authority of the application[50].

Where the planning authority requests by notice the applicant to submit further information it must make its decision within 4 weeks of the information being submitted in compliance with the notice[51].

Where further information is submitted in accordance with a request by the planning authority, and the authority considers that it contains significant additional data that requires the publication of a notice by the applicant, the planning authority must make its decision within 4 weeks beginning on the day on which that notice is published[52].

Where an Environmental Impact Assessment Report (EIAR) or a Natura Impact Statement (NIS) is submitted with an application, the planning authority must make its decision within 8 weeks of the receipt of the EIAR or NIS together with the required public notice[53]. Where the planning authority requests further information in relation to the EIAR, it must make its decision within 8 weeks of the satisfactory receipt of that information. The equivalent period in respect of a Natura Impact Statement is 4 weeks[54]. If the further information submitted contains significant additional data and publication of a notice is required, the planning authority must make its decision within 8 weeks of the publication of that notice in the case of EIAR and 4 weeks in the case of NIS[55].

[50] Section 34(8) of the Planning Act
[51] Section 34(8)(b) of the Planning Act
[52] Section 34(8)(b) of the Planning Act
[53] Section 34(8)(ca)(i) of the Planning Act
[54] Section 34(8)(ca)(ii)(I) of the Planning Act
[55] Section 34(8)(ca)(ii)(II) of the Planning Act

Duration of a planning permission

A planning permission granted by the Planning Authority, or An Bord Pleanála on appeal, ceases to have effect after a period of 5 years from the date the permission was granted in cases where the permitted development is not commenced within that period, or where it has commenced in relation to so much of the development as has not been completed within that period[56].

There are exceptions to the appropriate period which may be relevant to a peat extraction development. Included in these is that the 5-year time limit does not apply to permissions for retention on land of any structure, a limited period permission, or the continuance of any use of land in accordance with a permission[57].

An applicant for permission may request a period in excess of 5 years for the carrying out of a proposed development, and the terms of any permission, subsequently granted, may allow for this, usually as a condition attaching to the permission. The planning authority or An Bord Pleanála may, having regard to the nature and extent of the proposed development, and any other material consideration, specify the period during which the permission is to have effect, being a period of not less than 2 years[58].

An applicant may apply to the planning authority to extend the appropriate period, and the planning authority may extend the period for the carrying out of the development by an additional period not exceeding 5 years to enable the development be completed[59]. An application to extend the duration of a permission can only be made once. The application for an extension must be made not earlier than one year before the expiry of the appropriate period sought to be extended[60]. A planning authority can only extend the appropriate period once.

Considerations for the planning authority where such an application is made are that the development commenced before the expiry of the permission and that substantial works were carried out and that the development will be completed within a reasonable period of time, or that there were considerations of a commercial, economic or technical nature beyond the control of the applicant which mitigated against the commencement of the development or the carrying out of substantial works, that there have been no significant changes in the development objectives for the area in which the site is located, that the

[56] Section 40(1) of the Planning Act.
[57] Section 40(2) of the Planning Act
[58] Section 41(1) of the Planning Act
[59] Section 42 of the Planning Act.
[60] Article 41 of the Planning Regulations

development would not be inconsistent with the proper planning and sustainable development of the area, and that where development has not commenced, that EIA and/or an AA, or both if required, was or were carried out before the permission was granted[61].

In extending the duration of a permission, the planning authority may attach conditions requiring adequate security for the satisfactory completion of the development, and may add to or vary any conditions of the permission[62].

It is an objective of the Planning Authority to make a decision on the application for an extension of the time period within a period of 8 weeks

Public participation in the planning application and appeal process

Within the period of 2 weeks before the making of a planning application, the applicant must give notice of the intention to make the application in an approved newspaper and also to fix an easily visible and legible site notice on or near the main entrance(s) to the project lands from the public road or, where the lands do not adjoin the public road, in a conspicuous position on the project lands[63]. The site notice must be maintained in position on the lands for a period of 5 weeks from the date of receipt of the planning application by the planning authority[64]. These notices inform the public that submissions or observations may be made to the planning authority within a period of 5 weeks of the date of receipt of the application on payment of the prescribed fee[65].

When an appeal is brought against a decision of a planning authority, An Bord Pleanála (the Board) must determine the application as if it had been made to the Board in the first instance[66]. The decision of the Board annuls the decision of the planning authority as from the time it was given. An appeal must be made within 4 weeks beginning on the day of the planning authority's decision, otherwise the appeal is invalid.

Any person may make submissions or observations to the Board in relation to an appeal within a period of 4 weeks of receipt of an appeal or 4 weeks of a notice published indicating the receipt of an EIAR, requested by the Board in an appeal case, (or a notice indicating the

[61] These considerations are set out in full in Section 42(1) of the Planning Act
[62] Section 42(2) of the Planning Act
[63] Articles 17, 18 and 19 of the Planning Regulations
[64] Article 20 of the Planning Regulations
[65] Article 18(1)(e) of the Planning Regulations
[66] Section 37(1)(b) of the Planning Act

submission of revised plans etc}. Any such submission or observation must be in writing and must be accompanied by the fee payable[67].

Right to appeal

An applicant and any person who made submissions or observations in writing in relation to a planning application to the planning authority in accordance with the Planning Regulations may, on payment of the appropriate fee, appeal against a decision of a planning authority under Section 34[68]. In other words, an applicant can appeal against a decision to refuse permission or against a condition or conditions attached to a permission granted, and any other person or body can appeal against a decision of a planning authority, as long as they have previously made a valid written submission or observation to the planning authority during the period of consideration of the application by the planning authority.

Where a prescribed body should have been notified of a planning application and was not so notified, it may appeal the decision of the planning authority within 4 weeks of the day of the planning authority's decision[69].

A body or organisation (not being a state authority, a public authority or a government body or agency) whose aims or objectives relate to the promotion of environmental protection and has pursued those aims or objectives during the period of 12 months preceding the making of the decision may appeal against a decision on an application for which an EIAR was required, within the 4-week appropriate period[70].

Any person who has an interest in land adjoining the land for which permission is granted may apply to the Board for leave to appeal within the 4-week period and subject to the payment of the appropriate fee. Considerations for the Board in deciding an application for leave to appeal are if the development granted will differ materially from the development set out in the application by reasons of conditions imposed, and if the imposition of such conditions will materially affect the applicant's enjoyment of the land or reduce the value of the land[71]. Where leave to appeal is granted, the appeal must be submitted within 2 weeks of the notice granting leave.

[67] Section 130 of the Planning Act
[68] Section 37(1) of the Planning Act
[69] Section 37(4)(a) of the Planning Act
[70] Section 37 (4)(d) of the Planning Act.
[71] Section 37(6)(d) of the Planning Act

The considerations for the Board in deciding an appeal are broadly similar to those applying to a planning authority in making its decision.

Types of decision possible on appeal

Following the consideration of an appeal, An Bord Pleanála may decide to grant permission, with or without conditions, or may decide to refuse permission. Similar provisions generally apply in EIA and AA cases as referred to above for decisions by planning authorities.

Indicative timescale for the appeal process

The Board is required to make its decision on an appeal as expeditiously as is consistent with proper planning and sustainable development. It is an objective of the Board to ensure a decision is made on an appeal within a period of 18 weeks beginning on the date of receipt by the Board of the appeal[72].

Where, because of particular circumstances, the Board cannot make its decision within the period of 18 weeks, it must serve notice on the parties and any person who made submissions or observations to the Board in respect of the appeal giving reasons and specifying a revised date before which the Board intends to make its decision[73]

[72] Section 126(1) and (2) of the Planning Act.
[73] Section 126(3)(a) of the Planning Act

Appendix 1

The Licensing Regulatory System

Scope of activities covered

A licence from the Environmental Protection Agency (EPA) under Part IV of the Environmental Protection Agency Act 1992 (the EPA Act), as amended, is required for an activity described in the Act as "the extraction of peat in the course of business which involves an area exceeding 50 hectares". This now includes what were described as "established activities" when Part IV first came into effect. It is a requirement in the legislation that all peat extraction projects of 30 ha or more be subject to an Environmental Impact Assessment by the consent authority before consent may be granted. All applications to the EPA for a licence are, accordingly, subject to EIA and so an EIAR must be submitted with the application[74].

Procedures for making a licence application

Procedures for the making of applications to the EPA for licenses under Part IV4 of the EPA Act are set out in Part II of the IPC Regulations (S.I. No 283/2013 as amended by S.I.189/2020). Information and guidance on the licensing process and on making a licence application is available on the EPA's website at: How to apply for an IPC licence | Environmental Protection Agency (epa.ie)

Considerations of the Agency in determining licence applications

The EPA Act of 1992 states that the functions of the EPA include the licensing, regulation, and control of activities for the purposes of environmental protection[75].

[74] Section 82 of the EPA Act and S.I. No 460 of 1998
[75] Section 52(1) of the EPA Act

The EPA Act 1992 sets out some criteria which must be taken into account by the EPA in performing its functions. These include[76]

- having regard to the need for a high standard of environmental protection and the need to promote sustainable and environmentally sound development, processes or operations,
- having regard to the need for precaution in relation to the potentially harmful effect of emissions which could cause significant environmental pollution,
- having regard to the need to give effect, insofar as it is feasible, to the "polluter pays" principle and
- ensuring, in so far as is practicable, that a proper balance is achieved between the need to protect the environment (and the cost of such protection) and the need for infrastructural, economic and social progress and development.

There are some more specific criteria to which the Agency must have regard including[77]

- Any Air Quality Management Plan or Special Control Area under the Air Pollution Act 1987
- Any Water Quality Management Plan under the Water Pollution Act 1977, or any Waste Management Plan
- Any Waste Management Plan
- Noise standards set out in Regulations made under section 106 of the EPA Act 1992
- Policies and objectives of the Minister and the Government in relation to the control of emissions

The Agency may also not grant a licence if the activity would[78]

- Contravene air quality standards or emission limit values set out in regulations under the Air Pollution Act
- Contravene quality standards for waters, sewage effluents or trade effluents prescribed under section 26 of the Water Pollution Act 1977
- Contravene standards set out in regulations under the European Communities Act 1972 or in any other legislation
- Contravene any noise regulations under section 106 of the EPA Act 1992
- Cause significant environmental pollution due to emissions from the activity

[76] Section 52(2) of the EPA Act
[77] Section 83(3) of the EPA Act
[78] Section 83(5) of the EPA Act

- Not use best available techniques to reduce and control emissions
- Not prevent or minimise the production of waste and ensure that waste produced is recovered or disposed of so as to minimise impact on the environment
- Not use energy efficiently in the carrying on of the activity and
- The Agency must also be satisfied that the applicant or licensee or transferee, as the case may be, is a fit and proper person to hold a licence

As all peat extraction licence applications are subject to EIA the EPA must consider the impacts of the project on the environment in accordance with the requirements of the EU EIA Directive. These requirements are set out in detail in the legislation.

An application must be accompanied by certain planning related documents stipulated in section 87 of the EPA Act where the activity involves development for which a grant of planning permission is required. Where applicants fail to provide this information, the Agency shall refuse to consider the application. Where a planning application is under consideration the Agency cannot make a decision on an IPC Licence application until all stages of the planning process are completed.

There is provision in the legislation for the Agency to co-ordinate its EIA deliberations with the planning authority and/or An Bord Pleanála where an application for development facilitating the activity has been or is being assessed by the planning authority or An Bord Pleanála. The Agency may in some circumstances carry out its EIA through consultations with the planning Authority or An Bord Pleanála[79]

The EIA carried out by the EPA in assessing a licence application places greatest emphasis on the effects of emissions, as defined in the EPA Act, on the environment and on the prevention and control of pollution. This reflects the provisions on the EPA Act, where it is stated that the Agency, as part of its consideration of an application for a licence, shall ensure before a licence or a revised licence is granted, and where the activity to which such licence or revised licence relates, is likely to have significant effects on the environment, that the application is made subject to an environmental impact assessment as respects the matters that come within the functions of the Agency including the functions conferred on the Agency by or under the EPA Act[80].

In addition to carrying out an EIA of the activity for which a licence has been applied for the EPA must also implement measures to ensure that the requirements of EU Directive 92/43/EEC (Habitats Directive) and Directive 2009/147/EC (Birds Directive) are complied

[79] Section 87(1G)(a) of the EPA Act
[80] Section 83(2A)(b) Of the EPA Act

with. The relevant Irish regulations implementing these Directives, for the licensing of peat extraction, are the European Communities (Birds and Natural Habitats) Regulations 2011. (S.I. 477 of 2011). These were amended in 2021 by the European Union (Birds and Natural Habitats) (Amendment) Regulations 2021 (S.I. No. 293 of 2021). These regulations require that the EPA carries out a screening exercise to ascertain if the activity in question, individually or in-combination with other plans or projects, is likely to have any significant effect on any European site as defined in the Regulations. The screening must be carried out in view of best scientific knowledge and having regard to the conservation objectives for the site. A determination of the issue considered in the screening must be made before any licence is granted.

In any situation where it is ascertained through screening that the project is likely to have a significant effect on any European site the applicant may be required to submit a Natura Impact Statement (as defined in the regulations) and the EPA must carry out a detailed assessment or Appropriate Assessment (AA), as defined in the regulations. In the event of it being concluded in this assessment that the project individually or in-combination with other plans or projects, is likely to adversely affect the integrity of any European Site a licence may not be granted unless there are imperative reasons of over-riding public interest (IROPI)[81].

Types of decision/conditions

The Agency may refuse to grant a licence or may grant a licence with or without conditions. The power to impose conditions is a general one. The legislation also states that in cases requiring EIA the EPA may impose conditions in the licence or revised licence as it considers necessary to avoid, reduce and, if possible, offset the major adverse effects of the development or proposed development (if any) comprising or for the purposes of the activity to which the application for a licence relates[82].

The legislation also sets out examples of the nature of conditions which shall or may be contained in licences. Examples of conditions which shall be included are[83]

- Emission limit values for pollutants likely to be emitted in significant quantity

[81] Regulations 42 and 43 of S.I. 477/2011
[82] Section 83(4)(aa) of the EPA Act
[83] Section 86(1)(a) of the EPA Act

- Requirements to minimise pollution and ensure a high level of protection for the environment
- Where necessary requirements to protect ground-waters and the management of waste
- Monitoring of emissions, keeping of records and the furnishing of information to the EPA or to any other person
- Measures to be taken outside normal operating conditions e.g., plant malfunction.
- Specify that the Agency be informed about any incident or accident affecting the environment

Examples of types of conditions given in the legislation which may be included are[84]

- Specify the level and method of treatment required for an emission
- Specify the period during which an emission may or may not be made.
- Specify matters relating to the design of pipes or stacks through which emissions may be made
- Specify limits or the amount or composition of any substance produced
- Specify requirements in relation to the recovery or disposal of waste.
- Require payments to the Agency towards costs involved in determining if the activity is operating in compliance with conditions.

Conditions included in licences relating to peat extraction typically include ones dealing with

- The preparation of an Environmental Management Programme to control the on-going environmental management of the activity
- The preparation and submission of an Annual Environmental Report.
- A requirement that a designated person in charge be present at all operational times
- Limits or emission levels for noise emissions
- Emission limits for potential air pollutants, particularly dust emissions
- Emission limits for discharges to waters
- Requirements in relation to the control, recovery and disposal of waste
- Proposals for rehabilitation of lands following peat extraction
- Monitoring and reporting of emissions to the atmosphere and to waters and of noise levels
- Reporting of incidents and accidents

[84] Section 86(1)(b) of the EPA Act

- Emergency response requirements
- Logging and reporting of complaints
- Financial provisions involving payments to the Agency

Indicative timescale for decision

The EPA is required generally to issue a proposed determination on a licence or review of a licence application within 8 weeks of the receipt of a valid application or of further information where such is requested by the Agency[85]. This time-scale may however be extended in situations where the Agency considers additional time is required to conclude consultations with the Planning Authority or the Board in cases requiring EIA or with other Member States of the EU where transboundary impacts may arise[86]. The legislation also requires that the Agency shall not issue a proposed determination prior to a planning authority making a decision on an application comprising of development required to facilitate the activity. (The time scale for an appeal to An Bord Pleanála must also have passed)[87] The 8-week period may also be extended to any period with the agreement of the applicant for a licence or review[88]. There is also provision for the extension of the time period for issuing a proposed determination of a licence application in a situation where further information is sought by the EPA.

Following the issuing of a proposed determination of the licence application and its notification there is a period of 28 days for persons to lodge an objection to the proposed determination. Any person making an objection to the proposed determination may request an oral hearing. It is at the Agency's discretion to hold an oral hearing or to proceed without such hearing. There is an obligation on the EPA to make a determination on whether or not to hold an oral hearing and make a decision on the objection(s) and licence application as expeditiously as possible[89].

In the event of the Agency considering that it would not be possible or appropriate to complete the procedures for the consideration of any objection(s) within a period of 4 months from the expiration of the 8-week period for the initial proposed determination it must notify the parties and indicate why this is so and give a date by which the procedures are

[85] Section 87(3) of the EPA Act
[86] Section 87(3A) of the EPA Act and Regulation 14 {3) of S.I. 283 of 2013
[87] Section 87(1D)(d) of the EPA Act
[88] Regulation 14 (2) of S.I. 283 of 2013
[89] Section 87(9) of the EPA Act

envisaged to be completed. The Agency must then take all steps open to it to complete the procedures by the date specified[90].

Duration of a licence

There is no specified duration period for a licence under Part IV of the EPA Act 1992. There is however provision in the legislation for the review of a licence in various circumstances[91]. The licensee may however surrender the licence. There is provision for the EPA to accept or reject such surrender of a licence[92]. There is also provision for the licensee to seek a review of a licence[93].

The legislation stipulates that, unless an activity for which a licence has been granted substantially commences within 3 years, or such longer period as may be stated in the licence, or accepted by the EPA on receipt of a request for such extension, the licence shall cease to have effect. A licence also ceases to have effect if the activity ceases for a period of 3 years or more. This cessation of the licence does not relieve the licensee of the requirement to comply with conditions etc contained in the licence, including rehabilitation[94].

Public participation in licensing process

The public and all persons having an interest in the matter are entitled to participate in the decision-making process for any development for which EIA is required. The legislation requires that public notice is given of any licence applications. This must be done by way of notice in a newspaper circulating in the area and by the erection of a site notice. It is a requirement of the legislation that the public notices indicate that submissions in relation to the likely effects of the activity on the environment may be made to the Agency in a time frame to be indicated on the Agency's web site[95].

The regulations stipulate that any person wishing to make a submission in relation to the application has a period of 30 days to do so from a date when the relevant information is available for inspection. The date of the commencement and end of this period is to be published on the web site of the EPA[96]. There is also provision in the legislation for the EPA

[90] Regulation 36 of S.I. 283 of 2013
[91] Section 90 of the EPA Act
[92] Section 95 of the EPA Act
[93] Section 90 of the EPA Act
[94] Section 92 of the EPA Act
[95] Regulations 4, 5 and 6 of S.I. 283 of 2013 as amended by S.I. 189 of 2020
[96] Regulation 4(2)(c) of S.I. 283 of 2013 as amended by S.I. 189 of 2020

notifying prescribed bodies of the application. There are detailed procedures in relation to consultation with the planning authority and/or An Bord Pleanála on EIA.

There are also public consultation provisions in the legislation regarding Appropriate Assessment. Where the EPA determines that an Appropriate Assessment is required for a licence application, a notice for public consultation is required to be published. Any person may make a submission or observation within 30 days from the date of the notice, or whatever longer timeframe appears on the notice. The EPA is required to have regard to any submissions or observations received[97].

Following the issuing of a proposed determination of a licence application there is a 28-day period for the lodgement of an objection to the proposed determination. An oral hearing may be sought and where this is granted there is an opportunity for presenting the objection in a public forum. (In the event of there being no objection the licence will issue in accordance with the proposed determination).

Right of appeal

A proposed determination of a licence application issued by the Environmental Protection Agency may be appealed by the applicant or any member of the public through making an objection to the Agency. Internal procedures in the EPA, result in the merits of the objection(s) being considered and reported on by different personnel from those who dealt with the application prior to the proposed decision.

The legislation states that the decision of the EPA on the licence application may only be challenged by way judicial review to the High Court. Any such judicial review proceedings must generally be commenced with 8 weeks of the making of the decision by the EPA on the application[98]. The issue of judicial review is addressed in Appendix 3 of this Guide. Procedures etc in relation to the judicial review of the EPA decision on a licence application are generally similar to those arising from decisions under the planning code.

[97] Regulation 42(13) of S.I. 477 of 2011 as amended by S.I. 293 of 2021
[98] Section 87(10) of the EPA Act

Appendix 2

Note on Substitute Consent provisions

Existing provisions in relation to substitute consent applications are contained in the Planning Act. There are no analogous or similar provisions in the EPA Act pertaining to licences. A licence is, however, required for both new and existing peat extraction activities, in the course of business, involving an area exceeding 50 hectares.

The provisions relating to substitute consent applications were introduced to cover situations where planning applications for retention could not be made, as EIA, screening for EIA or AA was required and not carried out, and the development has taken place or is being carried out. It was considered that an application for regularisation was warranted and allowed for in the EU EIA Directive if some exceptional circumstances applied. In a number of judgments, the EU Court of Justice or Irish Courts had also quashed planning permissions previously granted, often for failure to comply with EU Directives.

The substitute consent procedure is set out in Part XA of the 2000 Planning Act. Applications for substitute consent are made to An Bord Pleanála and are accompanied by a Remedial Environmental Impact Assessment Report and/or a Remedial Natura Impact Statement and, in some cases, an Environmental Impact Assessment Report and a Natura Impact Assessment. The detailed procedures in relation to applications for substitute consent are set out in Part 19 of the Planning Regulations.

The substitute consent procedure is of benefit to persons wishing to regularise an existing situation rather than to continue operations. The only circumstances where an application for development, not already carried out, can be made to the Board under Part XA, is for the completion of development for which planning permission was previously granted but where the decision to grant permission is quashed by the Court. (A remedial EIAR and remedial NIS plus an EIAR and NIS for the un-completed parts of the development previously permitted are required). There is no provision in Part XA for permitting new development in a situation where no permission was previously granted.

The substitute consent procedures generally require the prospective applicant initially to apply to An Bord Pleanála for leave to apply for substitute consent. An Bord Pleanála must determine that there are some exceptional circumstances in the case giving a right to apply for substitute consent prior to it so determining[99]. There is also provision for planning authorities directing a person to apply for substitute consent. This applies only in limited

[99] Section 177D of the Planning Act

circumstances[100]. A developer or relevant land owner may also make an application for substitute consent on the basis of an argument that an existing permission may not be valid in law[101]. An Bord Pleanála may not however grant substitute consent for any development unless it is satisfied that exceptional circumstances exist, and it is not bound by any decision it may have taken at leave to apply for substitute consent stage[102]. Any person may also make submissions on the exceptional circumstances issue at the substitute consent application stage[103].

In considering applications for substitute consent An Bord Pleanála may issue directions, during the course of its consideration, to persons who have applied for substitute consent to cease activity on the site in certain circumstances[104]. There is provision for imposing conditions in any decision to grant substitute consent for controlling, reducing etc. effects on the environment and for remediation of all or part of the site[105]. There is also provision, when refusing leave to apply for substitute consent or refusing substitute consent, for the Board to give directions in relation to ceasing all or part of the activities on site, taking remedial measures to restore the site and/or to avoid the deterioration of habitats or species in European sites[106].

Conditions or more precisely directions which An Bord Pleanála may give with a decision to refuse an application for substitute consent (or leave to apply for substitute consent) may require cessation of the activity or operations or the taking of remedial measures to restore the site to a safe and environmentally sustainable condition. The directions may also require, the person directed, to comply with requirements relating to monitoring and inspection by the relevant planning authority of the remedial measures specified in the direction. The draft of the direction must be served on the person being directed and on the planning authority. Both parties may submit observations on the draft direction prior to the direction being issued[107].

A grant of substitute consent shall have effect as if it were a permission under section 34 of the Planning Act. Conditions etc. in a substitute consent can accordingly be enforced by the planning authority through the normal enforcement provisions. The Planning Act also specifies that where substitute consent is refused the development shall be deemed to be

[100] Section 177B of the Planning Act
[101] Section 177C(2)(a) of the Planning Act
[102] Section 177K(1A)(a) and (b) of the Planning Act
[103] Section 177H(1) of the Planning Act
[104] Section 177J of the Planning Act
[105] Section 177K of the Planning Act
[106] Section 177L of the Planning Act
[107] Section 177L of the Planning Act

unauthorised development and the planning authority is required to issue an enforcement notice as soon as may be[108]. In a situation where substitute consent is granted the development becomes authorised. The development authorised is that which has been carried out (as indicated in the application) and, where a previous permission was granted, the full or part of that permission applied for in the application for substitute consent[109].

[108] Section 177O of the Planning Act
[109] Section 177(2A) of the Planning Act

Appendix 3

Note on Judicial Review

Decisions of a planning authority, An Bord Pleanála and the EPA may be challenged in the High Court by way of judicial review.

There is a right of appeal, on planning grounds, against a decision of a planning authority on a planning application. There is, however, no right of appeal against a decision of An Bord Pleanála or the EPA on the planning merits of the decision or the appropriateness of the decision of the EPA from an environmental perspective. A person may however question the validity of the decisions of these organisations by way of judicial review in the High Court. In any decision on an application for which EIA is required the decision maker must point out that the validity of the decision may be challenged by judicial review to the High Court and the decision must indicate where information on judicial review is to be found.

The validity of a decision taken by An Bord Pleanála or the EPA may be questioned by making an application for judicial review under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986). The Planning Act and the EPA Act require that, subject to any extension to the time period which may be allowed by the High Court, any application for judicial review must be made within 8 weeks of the relevant decision. It should be noted that any challenge taken by way of judicial review may question only the validity of the decision and the Courts do not adjudicate on the merits of the development from the perspectives of the proper planning and sustainable development of the area and/or effects on the environment. Leave for judicial review shall not be granted unless the Court is satisfied that there are substantial grounds for contending that the decision is invalid or ought to be quashed and that the applicant has a sufficient interest in the matter which is the subject of the application or, in cases involving environmental impact assessment, is a body complying with specified criteria[110].

The planning legislation contains provisions in relation to the cost of judicial review proceedings relating to specified types of development (including proceedings relating to decisions or actions pursuant to a law of the State that gives effect to the public participation and access to justice provisions of Council Directive 2011/92/EU i.e. the EIA Directive to the provisions of Directive 2001/12/EC i.e. Directive on the assessment of the effects on the

[110] Section 50 of the Act and Section 87(10) of the EPA Act

environment of certain plans and programmes, Directive 2008/1/EC on Integrated Pollution Prevention and Control and paragraphs 3 and 4 of Article 6 of the Habitats Directive). The general provision contained in section 50B of the Planning Act is that in such cases each party shall bear its own costs. The Court however may award costs against any party in specified circumstances. There is also provision for the Court to award the costs of proceedings or a portion of such costs to an applicant against a respondent or notice party where relief is obtained to the extent that the action or omission of the respondent or notice party contributed to the relief being obtained.

The legislation requires that the Courts, in determining either an application for leave for judicial review under this section, an application for judicial review on foot of such leave, or an appeal against the High Court decision, shall act as expeditiously as possible consistent with the administration of justice[111].

General information on judicial review procedures is contained on the following website, www.citizensinformation.ie.

Disclaimer: The above is intended for information purposes. It does not purport to be a legally binding interpretation of the relevant provisions and it would be advisable for persons contemplating legal action to seek legal advice.

[111] Section 50A(10) and (11) of the Act, and Section 87(10) of the EPA Act