

27<sup>th</sup> May 2021

## APPROPRIATE ASSESSMENT OF SPECIFIC WORKS

### Cutaway Bog Decommissioning and Rehabilitation Plan – Esker Bog, Co. Offaly (the “Project”)

#### REASONED DETERMINATION

Regulation 42(1) of the European Communities (Birds and Natural Habitats) Regulations, 2011 (the ‘Habitats Regulations’) states, *inter alia*, ‘A screening for Appropriate Assessment of a [...] project [...] which a public authority wishes to undertake [...] shall be carried out by the public authority to assess, in view of best scientific knowledge and in view of the conservation objectives of the site, if that [...] project, individually or in combination with other plans or projects is likely to have significant effects on the European site.’ Regulation 42(2) of the Habitats Regulations states ‘A public authority shall carry out a screening for Appropriate Assessment under paragraph (1) before [...] a decision to undertake [...] a project is taken.’

Having taken the view that the activity required for the Project might constitute ‘projects’<sup>1</sup> within the meaning of the Habitats Regulations, Bord na Móna plc (“BNM”) decided that the activities required should be subject to screening for Appropriate Assessment (“AA”) pursuant to, *inter alia*, Regulation 42 of the Habitats Regulations and Article 6(3) of Council Directive 92 /43 /EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (the “Habitats Directive”).

Tom Donnellan, CEO Bord na Móna, delegated the function of making the determination of the screening for AA to Bord na Móna’s Company Secretary and General Counsel on the 5<sup>th</sup> May 2021.

In performing this determination of the screening for AA, I had regard to information contained in the following documents:

- 1) Delichon Ecology’s Appropriate Assessment Screening Report and Conclusions Statement; &
- 2) Appendices to Delichon Ecology’s Appropriate Assessment Screening Report, which include Esker Bog Cutaway Bog Decommissioning and Rehabilitation Plan 2021.

In performing this determination of the screening for AA I also met with and discussed with the following members of staff from BNM, Doreen King, Project Manager and Chris Cullen, Ecologist and Eamonn Delaney BSc, MSc, MCIEEM, CECOL from Delichon Ecology, the Planning and Environmental Consultants engaged by BNM,

Having performed screening for AA in respect of the Project in accordance with Regulation 42(7) Habitats Directive, I accept the recommendation of Delichon Ecology that **“Following screening it can reasonably be concluded that there is no likelihood of significant effects to two of the relevant European Sites (Raheenmore Bog and Long Derries Edenderry SAC) because of the proposed project, either alone or in-combination with other plans or projects. Therefore, the potential for significant effects on two European Sites has been excluded, the Project has been ‘Screened Out’ from the Appropriate Assessment process, no Appropriate Assessment is required in relation to these two European Sites.**

**Following screening it can reasonably be concluded that there is likelihood of significant effects to one of the relevant European Sites as a result of the proposed project, either alone or in-combination with other plans or projects. Therefore, the potential for significant effects on a European Site has not been excluded, and Appropriate Assessment is required in respect of the following European Site:**

<sup>1</sup> The Habitats Regulations contain a broad definition of “project” to include any “land use or infrastructural developments, including any development of land or on land”. Although the decommissioning and rehabilitation activity are exempted developments under the Planning and Development Acts 2000-2011, Bord na Móna acknowledges the activity might constitute a ‘project’ within the meaning of the Habitats Regulations.

# Bord na Móna

## - River Barrow and River Nore SAC (002162)

Accordingly, under and in accordance with Regulation 42(6) of the Habitats Regulations I determine that an Appropriate Assessment is required in respect of River Barrow and River Nore SAC.

Tom Donnellan, CEO Bord na Móna, delegated the function of making the determination of the AA to Bord na Móna's Company Secretary and General Counsel on the 5<sup>th</sup> May 2021.

Regulation 42(9) of the Habitats Regulations states *'Where a public authority is required to conduct an Appropriate Assessment [...] it shall- (a) prepare a Natura Impact Statement, (b) compile any other evidence including, but not limited to, scientific evidence that is required for the purposes of the Appropriate Assessment, and (c) submit a Natura Impact Statement together with evidence compiled under subparagraph (b) to the Minister not later than six weeks before it proposes to adopt or undertake the plan or project to which the Natura Impact Statement and evidence relates.'*

Delichon Ecology were instructed to prepare a Natura Impact Statement (to include all evidence including, but not limited to, scientific evidence that is required for the purposes of the Appropriate Assessment) in respect of the Project. That Natura Impact Statement has the title **Cutaway Bog Decommissioning and Rehabilitation Plan, Natura Impact Statement, Esker Bog, Co. Offaly.**

On 6<sup>th</sup> April 2021 BNM submitted that Natura Impact Statement to the Minister for Culture, Heritage and the Gaeltacht.

Regulation 42(10) of the Habitats Regulations states, *inter alia*, *'A public authority [...] shall not, without the agreement of the Minister, conclude an Appropriate Assessment [...] earlier than six weeks after the date on which it submitted the Natura Impact Statement to the Minister'*.

I confirm that the period of six weeks mentioned in Regulation 42(10) has passed.

Regulation 42(10) of the Habitats Regulation states, *inter alia*, *'A public authority [...] shall take account of any submissions made to it by the Minister.'*

I confirm that observations were received from the Minister dated 10<sup>th</sup> May 2021 and BNM have taken account of those submissions made to it by the Minister.

Regulation 42(13) of the Habitats Regulations states *'A public authority may, for the purposes of conducting an Appropriate Assessment, if it considers it appropriate, invite the opinion of the general public and, if it does so, it shall take such steps for that purpose as it considers necessary.'*

I have considered whether to invite the opinion of the general public and decided that is not necessary or appropriate. Bord na Móna have however actively engaged with a broad range of stakeholders, through a range of different communication tools and media for stakeholder engagement including meetings (virtual and face to face where Covid restriction permitted), public advertisements, and a dedicated webpage with contact details of the liaison officer.

Regulation 42(11) of the Habitats Regulations states *'An Appropriate Assessment [...] shall include a determination by the public authority [...] pursuant to Article 6(3) of the Habitats Directive as to whether or not a plan or project would adversely affect the integrity of a European site and the assessment shall be carried out by the public authority before a decision is taken to approve, undertake or adopt a plan or project, as the case may be.'*

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M R Burke, P Casey, D Cronin, G O'Donoghue, K Healy,  
P Rowland, M Slattery, E Treacy, E Tynan, B Walsh.

# Bord na Móna

Under and in accordance with Regulation 42(12) of the Habitats Regulations, in performing this determination of the AA, I have taken into account:

- (a) the Natura Impact Statement prepared by Delichon Ecology, including the recommendation contained therein that **“there are no significant effects identified which would adversely affect the Qualifying Interests or conservation objectives of the various SAC’s under consideration with regard to the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected..... It is clear that, given the application of prescribed protective measures for the avoidance of impacts and the implementation of the required mitigation measures, the proposed rehabilitation works will not give rise to adverse effects on the integrity of any of the identified European sites evaluated herein.”**
- (b) any other plans or projects that may, in combination with the Project, adversely affect the integrity of a European Site, which are included within the Natura Impact Statement;
- (c) the supplemental information furnished in relation to the Nature Impact Statement;
- (d) the observations received from the Minister;
- (e) the information or advice obtained, namely, BNM staff Doreen King, Project Manager and Chris Cullen, Ecologist and Eamonn Delaney BSc, MSc, MCIEEM, CECOL from Delichon Ecology, the consultant engaged by BNM to prepare Screening Report for Appropriate Assessment and Natura Impact Assessment.

Regulation 42(17)(b) of the Habitats Regulations states, *inter alia*, ‘A public authority shall not [...] undertake [...] a [...] project containing any conditions, restrictions or requirements purporting to- (i) permit the deferral of the collection of information required for a screening for Appropriate Assessment or for an Appropriate Assessment or the completion of a screening for Appropriate Assessment or an Appropriate Assessment until after the consent has been given, (ii) accept an incomplete Natura Impact Statement, or (iii) permit or facilitate the avoidance of compliance with the conditions set out in Article 6(4) of the Habitats Directive.’

I confirm that the proposed Project and this determination do not contain any such conditions, restrictions or requirements.

I accept the recommendations of Delichon Ecology in assessing the Project, that **“It is clear that, given the application of prescribed protective measures for the avoidance of impacts and the implementation of the required mitigation measures, the proposed rehabilitation works will not give rise to adverse effects on the integrity of any of the identified European sites evaluated herein.”**

Pursuant to Regulation 42(11) of the Habitats Regulations and Article 6(3) of the Habitats Directive, I determine, in view of the best scientific knowledge and the site’s conservation objectives, that the proposed Project, individually or in combination with other plans or projects, would not adversely affect the integrity of any European site.

I confirm that this determination has been made before any decision has been taken to approve, undertake or adopt the Project.

I am satisfied that BNM is not prohibited, by Regulation 42(16) of the Habitats Regulations, from undertaking the Project.

Signed:

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Anna Marie Curry

Company Secretary and General Counsel

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