

ENVIRONMENTAL PROTECTION AGENCY

Terms of a Proposed Direction issued pursuant to Section 63(3)(c) of the Environmental Agency Protection Act 1992 ("the 1992 Act") proposed to be issued pursuant to section 63(5) of the 1992 Act, relating to commercial peat extraction.

BY REGISTERED POST

To: Offaly County Council (the "Local Authority")

FAO: Ms Anna Marie Delaney, Chief Executive

EPA Reference: Unauthorised Commercial Peat Extraction

The Environmental Protection Agency ("the Agency") has carried out an assessment under Section 63(2) of the 1992 Act in relation to unauthorised commercial peat extraction in Co. Offaly. This included an assessment of the various reports and documentation provided by the Local Authority in relation to the Agency's requests for information under Section 63(1) of the 1992 Act.

The Agency, pursuant to the powers conferred on it by section 63(3)(c) of the 1992 Act, hereby proposes to direct the Local Authority under section 63(5) of the 1992 Act, to take the following measures, which the Agency considers necessary for the purposes of environmental protection, in respect of unauthorised commercial peat extraction in Co. Offaly:

1. Make a general county-wide written enforcement plan in respect of unauthorised commercial peat extraction in Co. Offaly. This plan shall detail the investigation and enforcement measures the Local Authority will take where it suspects or is of the view that unauthorised commercial peat extraction is taking place at any location within its functional area at a location, nature or scale that requires environmental protections to be in place. This shall include, but not be limited to, peat extraction (including any related drainage of bogland) which involves a new or extended area 30 hectares or more since 11 March 2002, where planning permission and an Environmental Impact Assessment ("EIA") may be required under the Planning and Development Act 2000 ("the PDA 2000"), and peat extraction (including any related drainage of bogland, which drainage commenced after 21 January 2002) in a new or extended area of

more than 10 hectares since 21 January 2002 which may not be exempt from planning permission since 21 January 2002.

2. Make specific written enforcement plans for the following locations which the Agency considers merit specific consideration, and shall detail specific steps to be taken:
 - a. **Ballindown, Bogderries and Clonbeale More, Co. Offaly**
 - b. **Bracklin Big, Wood of O and Fairfield, Co. Offaly**
 - c. **Cush and Eglish, Co. Offaly**
 - d. **Cushina, Co. Offaly**
 - e. **Killurin, Gorteen and Annaghmore, Co. Offaly**
 - f. **Killurin, Co. Offaly**
 - g. **Oldcroghan, Kilduff, Barnan and Clonearl Demesne, Co. Offaly**
 - h. **Kilmalady Big, Ballykilleen, Curraghboy or Woodfield Co. Offaly**
 - i. **Walshisland and Bunnagappagh, Co. Offaly.**
3. Each of the plans shall specify in detail the measures proposed to be taken by the Local Authority to ensure compliance with all relevant legislation. This shall include, as a minimum, compliance with the Environmental Impact Assessment Directive (Directive 2011/92/EU, as amended), the Birds Directive (Directive 2009/147/EC, as amended), the Habitats Directive (Directive 92/43/EEC, as amended), the Local Government Water Pollution Act 1977 & 1990 and the Environmental Protection Agency Act 1992 in respect of unauthorised commercial peat extraction.
4. Each of the plans shall include timeframes for each element of the work proposed in the plans.
5. In making these plans, regard shall be had to the judgment of Ms Justice Siobhan Phelan in *Harte Peat Ltd v The Environmental Protection Agency, Ireland and The Attorney General* [2022] IEHC 148. In particular, the elements of this Judgment which detail how the area involved in commercial peat extraction should be calculated and how exempt status of peat extraction should be considered where EIA or AA might be required.

The Agency, pursuant to Section 63(4) of the 1992 Act, hereby requests that you submit any observations to the Agency in relation to this Proposed Direction **by 2nd August 2024**. The Agency reminds you of the requirement to comply with Section 63 of the 1992 Act as attached.

Dated this **5th day of July 2024**

Signed on behalf of the Agency:

Pamela McDonnell

Pamela Mc Donnell

Programme Manager

Office of Environmental Enforcement

Appendix 1 - Full Terms of Section 63 EPA Act 1992

(1) The Agency may request a local authority to furnish, within a specified period, to it information in relation to the performance by the authority, either generally or in a specific case, of a statutory function of that authority in relation to environmental protection and the authority shall comply with such a request.

(2) The Agency may, having notified the local authority of its intention to do so, carry out an assessment of the performance by a local authority, either generally or in a specific case, of a statutory function of that authority in relation to environmental protection; for that purpose the authority shall comply with any request for the furnishing to the Agency of information, records or reports or the results of any monitoring by the authority, or, in connection with the foregoing, the affording to the Agency of access to any premises occupied by the authority, made by the Agency during the course of such assessment.

(3) Having exercised its powers under subsection (1) or (2), and having considered any information furnished to, or otherwise coming into the possession of, it in consequence of that exercise, the Agency may, with a view to ensuring the satisfactory performance by the local authority concerned of the function in question, do all or any of the following—

(a) issue such advice and recommendations to the authority as it considers necessary,

(b) provide, on such terms and conditions as may be agreed, such assistance, support or guidance as the Agency considers, in consultation with the authority, would be helpful,

(c) without prejudice to any of its powers under this Act or any other enactment, issue to the authority the terms of a direction ("the proposed direction") it proposes to issue, under subsection (5), to the authority requiring it to carry out, cause to be carried out, or arrange for, within a specified period, such action related to the function in question as the Agency considers necessary for the purposes of environmental protection.

(4) The proposed direction shall specify a period within which the local authority may make observations to the Agency in relation to the proposal to make the direction (and the authority may make such observations within that period accordingly).

(5) After the expiration of the period referred to in subsection (4) and consideration of any observations made by the local authority under that subsection, the Agency may confirm, with or without modification, or decide not to confirm its proposal to make the direction concerned, and, in a case where the proposal is confirmed, the Agency shall issue to the authority the direction concerned accordingly and the authority shall comply with the direction within the period specified therein.

(6) Notwithstanding anything in this section, where the Agency is of the opinion that the failure of a local authority to perform in a satisfactory manner a statutory function of the authority in relation to environmental protection is resulting in significant environmental pollution, or in a real and imminent risk of such pollution, the Agency may direct the authority to carry out, cause to be carried out, or arrange for, within a specified period, such action related to the function in question as the Agency considers necessary for the purposes of preventing, limiting, eliminating, abating or reducing such pollution, and the authority shall comply with such a direction.

(7) Where a local authority fails to comply with a direction issued under subsection (5) or (6), the Agency may carry out, cause to be carried out, or arrange for, such action related to the function in question as it considers necessary to ensure compliance with the direction and the costs of such action may be recovered by the Agency from the authority as a simple contract debt in any court of competent jurisdiction.

(8) A local authority shall be guilty of an offence if it—

(a) fails to comply with a request under subsection (1) or (2), or

(b) fails to comply with a direction under subsection (5) or (6).

(9) The Minister may, with the consent of such other (if any) Minister of the Government as the Minister considers appropriate having regard to the functions of that other Minister, make regulations enabling the Agency to exercise, in relation to a public authority (other than a local authority within the meaning of this section) that, in the opinion of the Minister, performs a statutory function in relation to environmental protection, the powers conferred on the Agency by this section in relation to a local authority.

(10) Nothing in this section shall be construed as enabling the Agency to exercise any power or control under this section in relation to the making of a decision on an application for a permission under section 34 of the Act of 2000.

(11) In this section, "local authority" has the meaning assigned to it by the Local Government Act 2001.