



MEMO

Office of
Environmental
Sustainability

To: Board

Date: 12th November 2020

From: Carol O'Sullivan, Inspector,
Environmental Licensing Programme

Meeting Date: 17th November 2020

Approved for Board by: Marie O'Connor

Cross Office Implications: Yes

Re: Integrated Pollution Control Licence Application Register Number P0974-01 Bulrush Horticulture Limited, P0914-01 Westland Horticulture Limited and P1119-01 Harte Peat Limited

1. Introduction

This memo concerns three applications for Integrated Pollution Control (IPC) licences, one received on the 16th October 2013 from Bulrush Horticulture Limited for an installation located at Camagh Bog, Doon, Castlepollard, County Westmeath, one received on the 7th October 2019 from Harte Peat Limited for an installation located within the townland of Derrycrave, Finnea, County Westmeath and one received on 31st July 2013 from Westland Horticulture Limited for an installation located at Lower Coole, Mayne, Ballinaloe & Clonsura, Near Coole & Fineagh, County Westmeath. The Agency regulates the peat sector through the licensing of the activity provided for in the EPA Act 1992 as amended, specifically in Part IV and Schedule 1 where the licensable activity is delineated as *the extraction of peat in the course of business which involves an area exceeding 50 hectares*.

The application submitted by Harte Peat Ltd was submitted to the Agency following an order of the High Court in which a settlement agreement between the EPA and Harte Peat Ltd and Lismoher Limited was made. Under the terms of this agreement Harte Peat Ltd and Lismoher Ltd agreed to apply to the Agency for a licence within six months. The licensing regime that they were to make the application under was the European Union (Environmental Impact Assessment) (Peat Extraction) Regulations 2019 (S.I. No. 4/2019), however, these regulations along with the Planning and Development Act 2000 (Exempted Development) Regulations 2019 were set aside by Order of the High Court on 20th September 2019. This meant the legislative position pertaining to licence applications for the extraction of peat reverted to that which was in place prior to the enactment of S.I. No. 4/2019 and large-scale peat extraction was no longer an exempted development under the Planning and Development Act 2000 as amended.

2. Assessment

The Agency is required to assess whether licence applications contain a grant of permission or confirmation of such permission being sought (this includes substitute consent application), (Section 87(1B) of the Environmental Protection Agency Act 1992 as amended).

In May 2020, for the purposes of determining compliance with Section 87(1B), the Agency wrote to Harte Peat Ltd, Bulrush Horticulture Ltd and Westland Horticulture Ltd, requesting details of the grant of planning permission or confirmation that an application for such permission was being sought. Bulrush Horticulture Ltd responded on the 12th June 2020 outlining that it intended to apply to An Bord Pleanála in the coming weeks for leave to apply for substitute consent. Westland Horticulture Ltd responded on the 15th June 2020 outlining that An Bord Pleanála had granted leave to apply for substitute consent and that it would be applying to An Bord Pleanála for substitute consent. Harte Peat Ltd responded on 29th May 2020 confirming that no grant of planning permission exists, that there is no planning permission under consideration and that they consider that when the licence application was made and receipted, it did not require planning permission and that there is no requirement to obtain planning permission.

The Agency wrote to Harte Peat Ltd on the 04th August 2020 outlining that it appears to the Agency that the licence application is one in respect of an activity that *prima facie* involves development or proposed development for which a grant of planning permission may be required. The Agency again requested the applicant to provide details of planning permission. The applicant's response dated 10th and 11th August 2020 sought the basis for the Agency concluding that the requirements of Section 87 were not met and sought details of the statutory basis for requiring planning permission as part of the licence application.

A further letter issued to Harte Peat Ltd on 21st October 2020, re-confirming the Agency's position with respect to Section 87(1B). The Agency outlined that a declaration under Section 5 of the Planning and Development Act, 2000 as amended would be accepted as conclusive proof that planning permission is not required for the activity.

To date, the following information remains outstanding from both Harte Peat Ltd and Bulrush Horticulture Ltd: details of planning permission having been granted, confirmation that an application for such permission or substitute consent has been sought or a Section 5 declaration.

Section 87(1C)¹ requires the Agency to refuse to consider an application that does not comply with Section 87(1B). As neither Harte Peat Ltd nor Bulrush Horticulture Ltd have made an application for substitute consent or for leave to apply for substitute consent to An Bord Pleanála, the Agency's request has not been complied with to the extent necessary to bring the applications into compliance with Section 87(1C) of the EPA Act 1992 as amended.

Licence applications which are not accompanied by:

- Details of the relevant grant of planning permission or
- Confirmation from the planning authority that an application for permission has been made or
- A Section 5 declaration under the Planning and Development, Act 2000 as amended

should be refused to be considered by the Agency pursuant to Section 87(1C) of the EPA Act, 1992 as amended.

Westland Horticulture Ltd have been granted leave to apply for substitute consent and have until the 23rd November 2020 to submit an application to An Bord Pleanála for substitute consent. Should no application be submitted, this licence application can be treated similarly to the Harte Peat Ltd and Bulrush Horticulture Ltd licence applications.

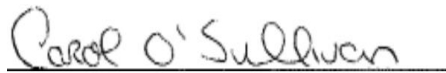
¹ 87(1C) EPA Act 1992 as amended. Where an application for a licence is made to the Agency in respect of an activity that involves development or proposed development for which a grant of permission is required but the applicant does not comply with subsection (1B), the Agency shall refuse to consider the application and shall inform the applicant accordingly.

3. Recommendation

It is recommended that the Agency

- Move to refuse to consider the licence applications for Harte Peat Ltd, P1119-01 and Bulrush Horticulture Ltd, P0974-01 pursuant to Section 87(1C) of the EPA Act 1992 as amended.
- Inform the applicants in accordance with Section 87(1C).
- Adopt this approach for all relevant licensing regimes.

Signed,

A handwritten signature in cursive script, reading "Carol O'Sullivan", is written over a horizontal line.

Carol O`Sullivan
Environmental Licensing Programme