An Taisce 75 YEARS 1948-2023
The National Trust for Ireland

Joint Committee on Environment and Climate Action,
Leinster House,
Dublin 2,
D02 XR20.

Sent by email to: climateaction@oireachtas.ie

1st November 2023

RE: An Taisce Submission on the Citizens' Assembly report on Biodiversity Loss

A Chairde,

An Taisce is writing to you to express our views in relation to the mandates of semi-State bodies around their biodiversity practices, and how these align with the recommendations made by the Citizen's Assembly on Biodiversity Loss. Our submission will relate to the mandates of Bord Na Mona, Coillte and the role of the 1945 Arterial Drainage Act.

1. Introduction

The untapped potential of Coillte and Bord na Mona's land holding for biodiversity is unprecedented in the history of the Irish State. We have the opportunity to restore public lands at scale for nature, public amenity and sustainable development. This is public land, and the Irish people should have a greater say in how it is utilised.

Coillte is the largest landowner in the Irish State, managing a landholding of 440,000 ha or 7% of Ireland's land area. It controls the vast majority of the 50.8% of Irish forestry which is in public ownership[1]. Coillte owns 232,500 ha of peatlands making them the largest owner of peatland habitat in Ireland. Tens of thousands of hectares of rare, raised bog and blanket bog habitat have been drained and afforested in past decades[2].

[1] DAFM (2023) Forest Statistics Ireland 2023 https://www.gov.ie/pdf/?file=https://assets.gov.ie/267876/499d9f21-751b-4d53-89d6-ed8e8e9efb97.pdf#page=null

[2] NPWS (2015) A National Peatlands Strategy 2015. Dublin: National Parks & Wildlife Services. Department of Arts, Heritage and the Gaeltacht.

Bord na Móna owns a landholding of approximately 80,000 ha[3], which would formerly have supported an incredible array of wildlife across a mosaic of raised bog, blanket bog, wetlands, grasslands, woodlands and freshwater habitats. Though much has been lost since Bord Na Mona was established in the 1940s, the potential for rehabilitating both remnant habitats and degraded habitats is incredible.

2. Citizens Assembly Recommendations

The Citizens Assembly on Biodiversity Loss made a number of recommendations which relate to the mandates of semi-state bodies such as Coillte and Bord Na Mona, and the role of the 1945 Arterial Drainage Act, thereby giving the Government a strong public mandate to address this. The specific recommendations are:

- **Recommendation 100**: The 1945 Arterial Drainage Act is no longer fit for purpose and must be reviewed and updated in order to take proper account of biodiversity and the climate crisis.

- **Recommendation 116:** The remits of Bord Na Móna and Coillte must each be reviewed to include a focus on peatland restoration and rehabilitation projects, with targeted outcomes on biodiversity conservation. The results of these outcomes must be freely available and published annually.

- **Recommendation 120:** There is a conflict of interest between business aims and corporate responsibility, particularly for State agencies. The State must fundamentally reassess the constitution, goals and operations of Coillte and the 1988 Forestry Act (as amended). This reassessment must ensure biodiversity protection and positive eco-system services are core objectives for Coillte, alongside providing higher quality timber, meaningful employment and benefits to the community.

- **Recommendations 121:** State-owned woodlands should be recognised and managed as a strategic, long-term national asset for the benefit of the common good.

These recommendations are in keeping with commitments in the Programme for Government, with the commitment to:

- "*Ensure that Coillte's remit supports the delivery of climate change commitments and the protection of biodiversity".*

- "*The retention of the commercial forests of Coillte in public ownership*"

[3] Bord Na Mona (2016) Bord Na Mona Biodiversity Action Plan 2016 – 2021 https://www.bordnamona.ie/wp-content/uploads/2021/03/Biodiversity-Action-Plan-2016-2021-1.pdf

- "*Ensure that Bord na Móna is required to take into account climate, biodiversity, and water objectives, as they deliver on their commercial mandate, through an amendment to the Turf Development Acts 1998*".

3. Coillte Mandate

It is our view that Coillte's mandate under the 1988 Forestry Act must be reviewed to bring it in line with current environmental crises and societal expectations, with regard to water quality, biodiversity loss and the climate crisis. Part II(12) of the Forestry Act 1988 provides the following in regard to Coillte's mandate:

> *"12.—(1) The principal objects of the company shall be stated in its memorandum of association to be—*
>
> *(a) to carry on the business of forestry and related activities on a commercial basis and in accordance with efficient silvicultural practices,*
>
> *(b) to establish and carry on woodland industries,*
>
> *(c) to participate with others in forestry and related activities consistent with its objects, designed to enhance the effective and profitable operation of the company, and*
>
> *(d) to utilise and manage the resources available to it in a manner consistent with the above objects."*

The Programme for Government committed to ensuring that Coillte's remit supports the delivery of climate change commitments and the protection of biodiversity. However, as constituted under the Forestry Act 1988, Coillte is mandated to prioritise business interests and profit. As long as Coillte is bound by this legal mandate, any consideration of biodiversity or climate will be secondary, or incidental. Therefore, as currently legally constituted, they cannot ensure biodiversity protection and positive eco-system services are core objectives.

If Coillte is to deliver on their own vision statement of balancing the multiple objectives of climate, nature, wood, and people then it is imperative that the legal requisite to prioritise profit via a commercial enterprise is removed. The particularly intensive forestry model which Coillte has employed to date is not compatible with a strategic vision based around the delivery of public goods in the form of climate, nature, people and sustainable development including wood products.

In order to implement 1. the recommendations from the Citizens Assembly, 2. The commitments in the Programme for Government and 3. The delivery of what the Coillte Vision Statement itself strives for, then the mandate of Coillte needs to change. Economics will prevail over all other considerations for as long as Coillte is legally mandated to prioritise that.

4. Bord na Mona

Bord Na Móna was founded under the Turf Development Acts 1946 and its legal remit was established under the act and other subsequent acts between 1946 and 1998. In essence Bord Na Móna's remit has been to acquire peatlands with the objective to exploit them commercially for turf and turf products:

> *"General duties of the Board.*
>
> *17.—(1) It shall be the duty of the Board—*
>
> *(a) to produce and market turf and turf products, and*
>
> *(b) to foster the production and use of turf and turf products, and*
>
> *(c) to acquire bogs and other lands, and*
>
> *(d) to manage, develop and work bogs and other lands vested in the Board, and*
>
> *(e) generally to do all such other things as arise out of, or are consequential upon, the duties mentioned in the preceding paragraphs of this section."*

Clearly, the mandate as currently constituted is not in keeping with the Programme for Government commitment to take into account climate, biodiversity, and water objectives, nor does it align with the Citizen's Assembly recommendation that Bord na Mona also focus on peatland restoration and rehabilitation.

Ireland's peatlands are of national and international importance, and the potential benefits for biodiversity and climate from a change in mandate for Bord na Mona are immense. From a climate perspective, the Climate Change Advisory Council (CCAC)[4] have highlighted that the rewetting of drained organic soils and peatland restoration must be a key government priority if Ireland is going to achieve a 51% reduction in net emissions in the LULUCF sector. The EPA have concluded that only modelled land use scenarios which included restoration of 70,000 ha of exploited peatlands managed to achieve net-zero in the AFOLU sector by 2050[5].

[4] CCAC-AR-2023-FINAL Compressed web.pdf (climatecouncil.ie)
[5] Evidence Synthesis Reports | Environmental Protection Agency (epa.ie)

From a biodiversity perspective, Bord Na Móna's peatlands would historically have supported a vast amount of wildlife across a range of raised bog, blanket bog, wetlands, grasslands, woodlands and freshwater habitats. These sites still hold enormous potential for biodiversity under the right management conditions.

The drainage of peatlands also releases nutrients (like phosphorus and nitrogen), ammonia, dissolved carbon, and sediment into rivers and lakes impacting negatively on water quality. The restoration of healthy peatlands would help provide natural filtration processes to clean water and reduce the quantity of water entering rivers and lake[6].

Additionally, recent flooding events have highlighted the need to hold water on the land via natural flood retention measures, and the restoration of peatlands is a critical part of that.

The co-benefits of a change of management of the land under the ownership of Bord Na Mona are clear, but in order to realise that it is imperative that their legal mandate be amended to include the prioritisation of environmental protection and conservation.

5. Arterial Drainage Maintenance 1945 and the OPW

It is a widely held view that the Arterial Drainage Act (1945) represents the thinking of a bygone era, is no longer fit for purpose, and needs to be reviewed and/or revoked. Under this Act the OPW maintains approximately 11,500 km of waterways, which involves various levels of activity, but would often involve dredging to remove silt and deepen channels, and the removal of in-stream and riparian, or bankside, vegetation. The difficulty arises in that the Arterial Drainage Act places an obligation on the OPW to maintain these waterways in a state of repair which maintains it as it was after the first management took place. Section 37(a) of the Arterial Drainage Act (1945) provides that:

> *"the Commissioners shall maintain the said drainage works or existing drainage works (as the case may be) in proper repair and effective condition".*

This results in, in many instances, the requirements of the Arterial Drainage Act directly conflicting with the requirements of the Habitats Directive and the Water Framework Directive, with the OPW compelled to maintain the waterways they drain in a specific time-stamped condition, without due consideration of the impact on Natura 2000 sites and species, and Water Framework Directive obligations. Additionally, while arterial drainage may effectively keep agricultural land drained and productive, it is often likely to just move the flooding problem further downstream to our villages, towns and cities[7]. From a climate resilience perspective, it is critical that we look to slow the flow and implement natural flood measures, which in many cases is the precise opposite of what the arterial drainage maintenance programme delivers, its whole premise being to move water off the land and into our streams and rivers as quickly as possible.

[6] Research Report: Optimising Water Quality Returns from Peatland Management while Delivering Co-benefits for Biodiversity and Climate - An Fóram Uisce (thewaterforum.ie)
[7] Floods, Dredging, and River Changes. (sepa.org.uk)

Additionally, while the requirements of the Nature Restoration Law remain to be finalised, it may include a provision relating to the adjustment of the water table on certain drained organic soils, which again may conflict with that specific obligation for 'proper repair' under the Arterial Drainage Act. The climate implications of maintaining drained organic soils in their current drained state must also be considered as an additional imperative to reconsider the Arterial Drainage Act 'effective repair' obligation.

As such, the review, or revocation, of the Arterial Drainage Act is a key lever to better protecting biodiversity and water quality, and to better align the actions of the State, and requirements under national law, with our EU legal obligations.

6. Recommendations

An Taisce wholly supports the recommendations of the Citizens Assembly on Biodiversity Loss in regard to the mandate of semi-state bodies, and the review of the Arterial Drainage Act. Our recommendations are that the Government move quickly to:

1. Amend the legal mandates conferred on Coillte by the Forestry Act 1988, Bord na Móna by the Turf Development Acts 1946-1998 and the OPW under the Arterial Drainage Acts 1945-1995, ensuring that the protection and restoration of the environment and climate action are core obligations; and place the government's commitment to retain public land in public ownership on a legal footing.
2. Issue new letters of expectation from government to the boards of Coillte and Bord Na Móna signalling the imminent reform of their legal mandates and directing them to not enter into any legal agreements which would undermine public ownership or public access to their landholdings.

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Elaine McGoff, PhD
Head of Advocacy, An Taisce- The National Trust for Ireland.