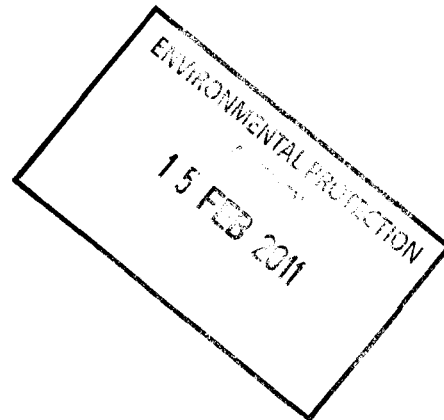


Energy, Environment & Safety



February 14th 2011

Ms. Sonja Smith
Office of Climate, Licensing & Resource Use
Environmental Protection Agency
Regional Inspectorate
PO Box 3000
Johnstown Castle Estate
Co. Wexford

Our Ref: 1182 Westland Horticulture
Your Ref: P0914-01
**Re: Article 11 Request for Further Information in support of Application for
IPPC Licence (21.September. 2010) – Section B.5**

Dear Ms Smith,

Further to your recent request for additional information under Article 11 (2)(b)(ii) of the EPA (Licensing) Regulations 1994 to 2008, (dated 21st September, 2010) and our response to you dated February 11, 2011 please find enclosed section B.5 – Letter Confirming Planning Status.

Trusting the enclosed information is to your satisfaction.

Yours sincerely,

Peadar O'Loughlin
Managing Director
For & on behalf of Westland Horticulture

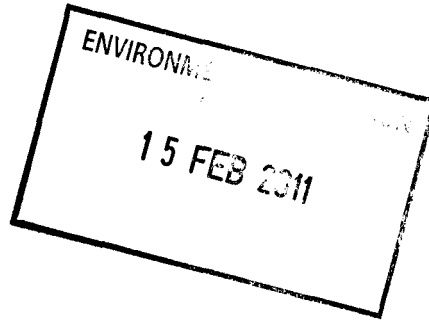
CC Mark Hamill, Westland Horticulture Ltd.

Encl



FBD House, Fels Point, Tralee, Co.Kerry
p: 066 7128321 f: 066 7180061 e: info@oes.ie w: www.oes.ie





Appendix B.5
RELEVANT PLANNING AUTHORITY

IPPC Licence Application Westland Horticulture Ltd.

Project Ref: OES1182_01

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Appendix B.5.1. A letter from confirming the planning status as exempted development and the there is appended as Appendix B.5.1.

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Appendix B.5
Letter Confirming Planning Status

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11th February 2011

John V. Kelly & Company
Solicitors
Church Street
Cavan

Attn: Aileen Dolan

Re: Cavan Peat Limited

Dear Aileen,

I have been asked to advise in respect of lands belonging to Cavan Peat Limited which are located at Clonsura, Co. Westmeath and lands belonging to Westmeath Peat Limited located at Coole, Mayne and Ballinaloe, Co. Westmeath.

These lands are bogland and comprise an area which it is clear has been used for some considerable time for peat extraction. I have been asked to advise in the context of a licensing process conducted by the Environmental Protection Agency under The Environmental Protection Agency Act as to whether these lands require in addition planning permission which might arise under the requirements of the Planning and Development Act, 2000 (As Amended) or indeed its predecessor the Local Government (Planning and Development) Act, 1963 – 1999.

There is no doubt that these lands historically have been used for peat extraction, which use extends to well before the coming into force of the Local Government (Planning and Development) Acts which commenced on the 1st October 1964. Any activity which had commenced before that date is deemed an established activity and that is a complete answer to any issues that might be raised in terms of its status under the Planning and Development Acts. The law as set out in that legislation, that is in the Local Government (Planning and Development) Acts, in effect deemed permission to be granted for any existing use which was being carried out on the appointed day and this continues within the transitional provisions in the Planning and Development Act, 2000.

Even if the position had been different and the activity had commenced some time in the 1960s and 1970s, the position of the lands would not be any different in terms of compliance with the Planning and Development legislation. Under the 1963 Local Government (Planning and Development) Act, the activity of peat extraction would have come within the definition of agriculture as set out in Section 2 of the Local Government (Planning and Development) Act 1963.

Agriculture in Section 2 is defined as including *“horticulture, fruit growing, seed growing, dairy farming, the breeding/keeping of livestock (including any creature kept for production of food, wool, skin or fat, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, the use of land for turbarry and the use of land for woodlands where that use is ancillary to farming of land, for other agriculture purposes and agriculture shall be construed accordingly.* In those circumstances the use of land for turbarry was part of the definition of agriculture. Indeed ‘turbarry’ is the extraction of peat/turf, which definition goes back to case law in the early 19th century.

Having established that the extraction of peat is agriculture, it is then necessary to consider Section 4 of the 1963 Local Government (Planning and Development) Act as follows:

“Section 4 (1) provides the following shall be exempted developments for the purposes of this Act: (a) development consisting of the use of any land for the purposes of agriculture or forestry (including afforestation) and development consisting of the use for any of those purposes of any building occupied together with the land so used;”.

This is a statutory exemption and should not be confused with exemptions contained in the various Regulations that have been adopted in conjunction with the primary statutory provisions. The exemption contained in Section 4(1) (a) is without restriction or limitation. There are no conditions attached to the exemption. The Act provided that the use of any land for agriculture – and one can substitute for the word “agriculture”, having regard to the definition in Section 2 the words “peat extraction” – is exempted development. In such circumstances therefore, any activity in the nature of peat extraction carried out even after the 1st October 1964 for the extraction of peat, must be deemed to be exempted development and therefore entirely authorized for the purposes of the planning and development legislation.

In such circumstances therefore, such activity throughout the 1960s, 1970s, 1980s and indeed the early 1990s was entirely consistent with – and indeed expressly authorized by – the planning and development legislation in force.

It was only in 1994 that any limitation was introduced in respect of the issue of peat extraction. Article 13 of SI 86/94 at paragraph (c) provided that peat extraction which would involve a new or extended area of 50 hectares or more was a prescribed development for the

purposes of the Environmental Impact Assessment Regulations. This amended, as it was prescribed Article 13, the provisions of Section 4 of the Local Government (Planning and Development) Act of 1963 to de-exempt new or extended areas of 50 hectares or more. Clearly it had no effect on areas where peat extraction had been carried on at that time. Such existing established activities could continue without any requirement for an Environmental Impact Assessment as the provision applied only to works on land where peat extraction had not previously been carried out. Furthermore insofar as the new provision applied, the area to be extracted which was new, either by way of an extension to an existing extracted area or to what could be described as virgin bogland, had to be in excess of 50 hectares. The provision clearly then could have no application to the lands the subject matter of the extraction which had been lawfully carried out previously and what is set out in the 1994 Planning and Development Regulations is limited in terms of its extent and would appear to have no application to the lands that I have been asked to advise on.

In this context it should also be noted that the legislative scheme provided that in order for the activity to commence, even under these provisions it was not necessary that actual peat extraction be carried out and if the lands were drained in contemplation of peat extraction, then this was sufficient to take it out of the category of a new or indeed extended use. However, having regard to the definition of 'works' that is set out in Section 2 of the Local Government (Planning and Development) Act 1963, the extraction of even one sod of peat in any event would be sufficient because 'works' is defined as "any act of construction, excavation, alteration..." (emphasis added). In such circumstances therefore, given that excavation amounts to works, the excavation of any peat would bring it within the definition of peat extraction and in such circumstances any subsequent extraction on the lands would be deemed to have occurred on the day that peat was first extracted. Lands therefore under the provisions of the Local Government (Planning and Development) Act and in particular the Local Government (Planning and Development) Regulations 1994, is deemed to have occurred if any act of peat extraction had been carried out or even if such extraction had not commenced, drainage works had been carried out as of that date.

In those circumstances I am in no doubt that no issue arises in respect of any authorization required for these lands under the Planning and Development Acts having applied the relevant provisions of the previous legislation, namely the Local Government (Planning and Development) Acts to the lands and it would appear that on any reading the activity on these lands is an established activity for the purposes of the Planning Acts.

Nothing further occurs.

Yours sincerely,

Sent by email and accordingly bears no signature

Michael O'Donnell BL