



**An Colste um Achomhairc
Foraioseachta**

Forestry Appeals Committee

27 April 2020

[REDACTED]
[REDACTED]

Our ref: FAC 325/2019

Subject: Appeal in relation to felling licence CN05-FL0100

Dear [REDACTED]

I refer to the appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine in respect of felling licence CN05-FL0100.

The FAC established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001 has now completed an examination of the facts and evidence provided by the parties to the appeal.

Background

Felling licence CN05-FL0100 was granted by the Department on 22 October 2019.

Hearing

A hearing of appeal 325/2019 was conducted by the FAC on 14 April 2020.

FAC Members:

**Mr Des Johnson (Chairperson), Mr Vincent Upton, Ms Mary Lawlor
and Mr Pat Coman**

Decision

Having considered all of the information before it, including a consultant's report, the FAC decided to cancel the licence relating to CN05-FL0100 for the reasons set out below.

The proposal is for felling and replanting on a site area of 2.63ha at Gartnanoul, Co. Cavan. The soil type is stated to be surface and groundwater gleys. The site forms part of a larger area of afforestation. On its northern, southern, and western boundaries the site is adjoined by

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afforestation and on its eastern boundary there is a forest road separating the site from Lough Oughter. The site is on a peninsula jutting into Lough Oughter and is within Killykeen Forest Park. The wider area is a lakeland landscape, heavily forested and surrounded by agricultural land use.

A Licence to clearfell the site was issued to Coillte Teoranta on the 22.10.2019. This is subject to general type conditions. Schedule 3 of the Licence requires the site to be replanted within 2 years of the end of clear felling by Sitka Spruce.

There is a single appeal against the granting of the licence. The grounds argue that it is not possible to carry out an AA screening assessment based on the information provided, and that it has not been shown that there may be an effect on a Natura 2000 site.

In response to the appeal, the DAFM stated that the AA screening procedure followed was appropriate at the time it was carried out (September 2019), information provided by Coillte was considered along with comments and observations submitted by referral bodies. It was concluded that the proposed development, considered in combination with other plans and projects would not give rise to significant effects on any Natura 2000 sites.

The site lies immediately adjacent to two Natura 2000 sites (these are the only Natura 2000 sites within 20km) – Lough Oughter and Associated Loughs SAC and Lough Oughter Complex SPA. The qualifying interests and conservation objectives for these sites are as follows:

Lough Oughter & Associated loughs SAC

Natural Eutrophic Lakes
Bog Woodland
Otter

The Conservation Objective for the SAC is to maintain or restore the favourable conservation condition of the Annex 1 Habitat(s) and or the Annex II species for which the SAC has been selected.

Lough Oughter Complex SPA

Great Crested Grebe
Whooper Swans
Wigeon
Wetlands and Waterbirds

The Conservation Objective for the SPA is to maintain or restore the favourable conservation condition of the bird species listed as special conservation interests for this SPA

Lough Oughter is also a Ramsar Convention Site and an important wildfowl sanctuary.

The proposal, while relatively small in scale, is located in a sensitive area and in immediate proximity to two Natura 2000 sites. It is located adjacent to the lake shore and separated from it by a forestry road, and is within a heavily forested area. The FAC noted the importance of this area as a wildfowl sanctuary, and for wetland and waterbirds as reflected in the qualifying interests for the SPA, and also for the otter, a qualifying interest for the SAC. Based on the information before it, the FAC is not satisfied that the Stage 1 screening was satisfactorily carried out in accordance with the provisions of the Habitats Directive. In coming to this conclusion, the FAC noted, in particular, the absence of essential information and an assessment of impacts (if any) arising from the proposed development in combination with other plans and projects, including forestry related projects. Given the close



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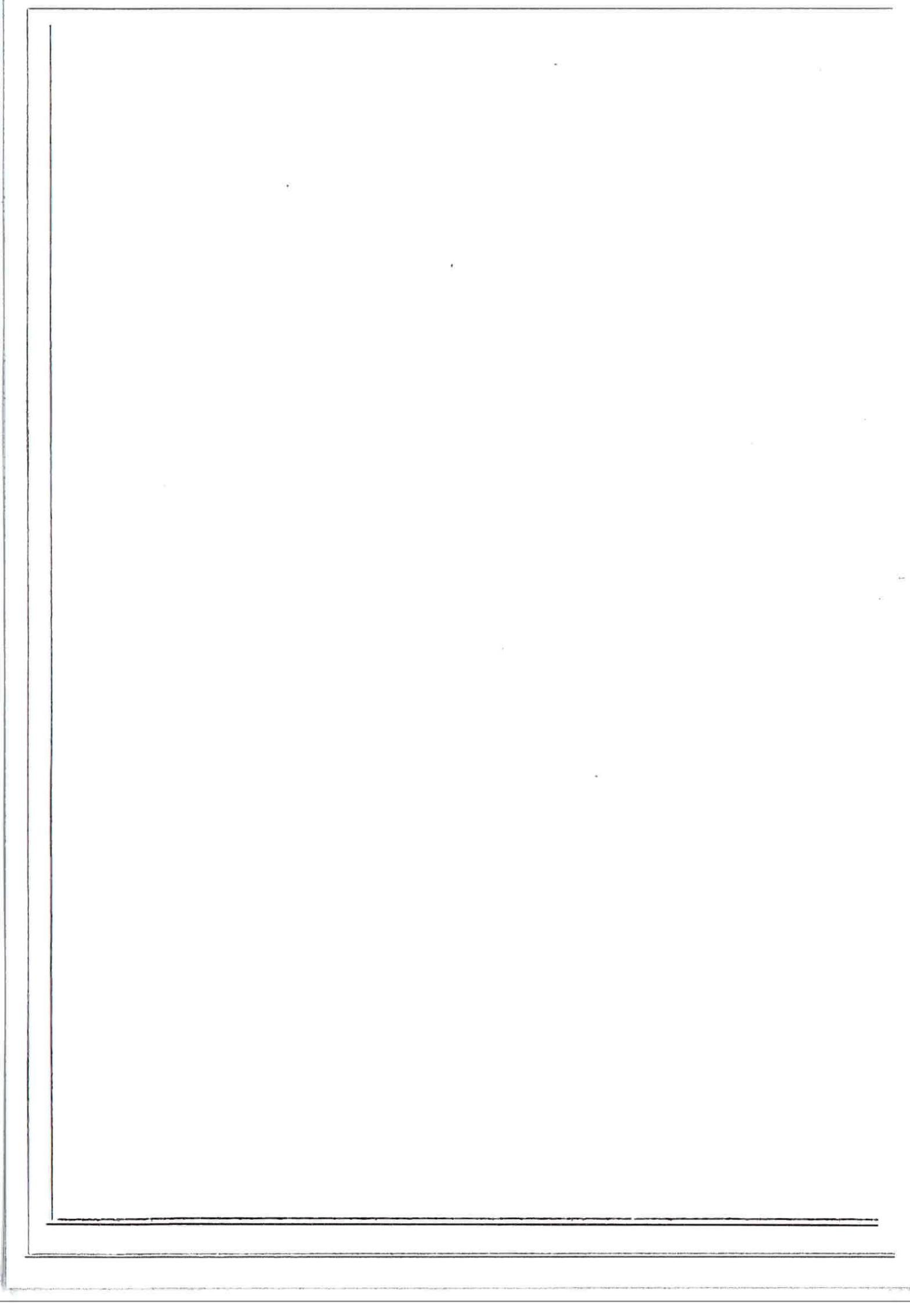
Forestry Appeals Committee

proximity to the listed Natura 2000 sites and their qualifying interests, the nature of the proposed development and the extent of other forestry in the area, the FAC considers that, in this case, the screening assessment should have taken account of any likelihood for the transmission of impacts through noise and sound disturbance and determined the significance of any such impacts. In these circumstances, the FAC decided to cancel the licence.

The FAC noted that the proposal for felling is not a class of development contained in the EIA Directive and does not include works which, in themselves, constitute a class of development covered by the EIA Directive. Furthermore, the proposed replanting is small scale, is not initial afforestation and would not involve a change in land use.

Yours sincerely,

Pat Coman, on behalf of the Forestry Appeals Committee



APPLICATION FOR TECHNICAL APPROVAL FOR A CLEARFELL LICENCE

[REDACTED]

[REDACTED]

DAFM FILE REF.

CN05-FL0100

TOWNLAND:

GARTNANOUL

COUNTY.

CAVAN

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

PROPOSAL

Clear felling

Species proposed for felling is Sitka Spruce

Reforestation species

The Licence application does not provide details of the reforestation species; schedule 3 of the Licence however requires the site to be replanted with Sitka Spruce.

Access

Details not provided; however a site map accompanying the application shows a forest road adjoining the eastern site boundary.

SITE

Area

2.63 ha. of which 0.13 ha. is open space.

(Note: The Licence application does not provide details as to whether the area proposed for felling is measured in acres or hectares; the licence however refers to hectares)

Soil Type

Surface and groundwater Gleys

Existing Land Use

Afforestation

Access

There is not any available information on the proposed access road: however the felling map accompanying the application shows a forest road contiguous to the eastern boundary of the site; the application form states that the site is separated from Lough Oughter by that road and a "Beech sub" (?)

Boundaries

The site is adjoined on its northern, southern, and western boundaries by afforestation ; it is adjoined on its eastern boundary by a forest road which separates the site from Lough Oughter. The S.western corner of the site adjoins an open area.

Adjoining land uses and Surrounding Environment

The site forms part of a swathe of afforestation which covers at least 50% of one of the many small fingers of land or peninsulas which jut out into Lough Oughter in and around the vicinity of Inch Island and Trinity Island. At its S.E tip the peninsula or finger of land on which the site is located would appear to be connected via a bridge to Killykeen Forest Park. Approx 16 kilometres to the west by road (via the Forest Park) lies the small town of Killashandra while to the east Cavan town lies approx 12.5 kilometres distant.

The site is set in a Lakeland landscape in which Lough Oughter is the largest of the lakes. Trinity Island and Inch Island immediately south of the site are characterised by heavy forest cover while significant swathes of afforestation also characterise nearby lakeside lands to the south and also inland locations near Castlehamilton to the west. The landscape to the north of the site in contrast appears to be open agricultural land, relatively unforested.

LICENCE DETAILS

A Licence to clearfell the site was issued [REDACTED] on the 22.10.2019

Conditions attached to the Licence are of a general nature referring to

- Compliance with a suite of Guidelines
- Treatment of stumps with urea
- On site preservation for a defined period of time of trees planted as part of a reforestation scheme
- Prior approval from DAFM for aerial fertilisation of restocked trees
- Protection of the public road network
- Commencement of felling operations only after a min.period of 28 days after grant of licence
- Erection of site notice
- Harvest Plan to be completed prior to commencement of felling

Schedule 3 of the Licence requires the site to be replanted within 2 years of the end of clear felling by Sitka Spruce

REFERRALS

Cavan Co. Council; details are not available.

APPELLANT'S SUBMISSION

The appellant refers to:

The test for Appropriate Assessment Screening which was laid down in Irish Law by Geoghegan J. In *Kelly v An Bord Pleanala* [2014] IEHC 400 (25.7.2014) where he referred to the following statements set out @ paras. 47-49 by the Advocate General in Case C-258/11 viz.

47. The *possibility* of there being a significant effect on the site will generate the need for an Appropriate Assessment for the purposes of Art. 6(3)...there is no need to *establish* such an effect ...it is merely necessary to determine that there *may be* such an effect.

48. The requirement that the effect in question be 'significant' exists in order to lay down a *de minimus* threshold. Plans or projects that have no appreciable effect on the site are thereby excluded ...

49. The threshold at the first stage of Art 6(3) is thus a very low one. It operates merely as a trigger to determine whether an appropriate assessment must be undertaken on the implications of the plan or project for the conservation objectives of the site...

The appellant therefore concludes that "based on the information supplied it is not possible to make a decision which would be in compliance with the requirements of the Habitats and EIA Directives.

Finally the appellant states that there has not been any assessment of cumulative or "in combination" impacts of the projects on the Natura sites.

AA SCREENING FORM

The conclusion therein stated that having considered :

- the nature, size and location of the project
- Potential negative consequences both immediate and future
- Potential pathways
- Sensitivity of the ecological receptors(ie qualifying interests, associated conservation objectives,and supporting habitats and species, as reviewed)
- Possible combination effects with other plans and projects

It was concluded that there was no possibility that the project would have a significant effect on the Natura site having regard to:

(i) the location of the project outside the Natura site

(ii) the mandatory adherence to any safeguards within the project as set out in the Standards for Felling and Reforestation.

(iii) the fact that any safeguards within the project which are "above and beyond" those set out in published Guidelines, Standards,Procedures, and Requirements, have been discounted

It was therefore concluded that the project could be screened out and that an Appropriate Assessment was not therefore required.

FORESTRY DIVISION STATEMENT TO THE FORESTRY APPEAL COMMITTEE

In accordance with the Appropriate Assessment procedure of the time, attention focused on Natura 2000 sites within 15km of the site proposed for clear felling. The assessment considered the following :

- Mapping information
- Harvesting and environmental operational procedures
- An Appropriate Assessment Pre Screening Report and associated methodology document.
- Referral Bodies' responses

Having reviewed the qualifying interests and conservation objectives of the Natura sites in the context of sources and pathways of impact, it was deemed that the project when considered in conjunction with other plans and projects would not give rise to the possibility of a significant effect on the Natura sites. The project was therefore screened out and an Appropriate Assessment was deemed unnecessary.

NATURA 2000 SITES

The EPA (GIS) map shows the clearfell site lying within what it identifies as part of Killykeen Forest Park. (Northern sector). That in turn lies within the Lough Oughter and associated Loughs SAC and SPA complex - an area in excess of 5000 ha. Lough Oughter is the only SAC/SPA lying within 20 km of the proposed clearfell site

The features with which the SAC is associated are :

Natural Eutrophic Lakes

Bog Woodland

Otter

The Conservation Objective for the SAC is to maintain or restore the favourable conservation condition of the Annex 1 Habitat(s) and or the Annex II species for which the SAC has been selected.

The features with which the SPA is associated are :

Great Crested Grebe

Whooper Swans

Wigeon

Wetlands and Waterbirds

The Conservation Objective for the SPA is to maintain or restore the favourable conservation condition of the bird species listed as special conservation interests for this SPA

Lough Oughter is also a Ramsar Convention Site and an important wildfowl sanctuary.

EIA PRELIMINARY EXAMINATION/SCREENING

In the current case a licence has been applied for clear felling an area of 2.6 ha and By reference to Directive 2011/92/EU as amended by Directive 2014/52/EU, projects

identified at Annex II Para 1(d) therein are "initial afforestation and deforestation for the purposes of conversion to another type of landuse"

EIA Preliminary/Examination/Screening for "Felling" followed by reforestation therefore would not appear to be required other than where the felling may be described as -

(i) initial deforestation and

(ii) where that deforestation is for the purposes of conversion to another landuse. In

conclusion I consider that EIA Preliminary Examination is not therefore required in the current case

APPROPRIATE ASSESSMENT

Re the appellant's assertion - that based on the information supplied it is not possible to make a decision which would be in compliance with the requirements of the Habitats Directive I would comment as follows

The purpose of Appropriate Assessment is to assess, in a focused and detailed manner, the impact of the proposed afforestation on the integrity of the Lough Oughter SAC and SPA, by way of the conservation objectives for the SAC and SPA. The Assessment may be carried out in a phased manner as set out below:

Screening: Stage 1 (a)

The question to be answered here is whether the project is directly connected with or necessary to the management of the above SAC and SPA .In the current case it would appear that there is not any direct connection between the project and Lough Oughter in its roles as a SAC and Spa nor is the project necessary to the management of same.

Screening : Stage 1 (b)

The 2 issues for assessment here are

(i) whether the project is likely *on an individual basis* to have a significant effect on the integrity of Lough Oughter in its roles as a SAC and SPA , having regard to the conservation objectives for the SAC and SPA

(ii) whether the project is likely to have a significant effect *in combination with other plans and projects* on the integrity of the above SAC and SPA having regard to their conservation objectives.

In both (i) and (ii) above mitigation measures designed to reduce or avoid the potential for harmful effects should not be taken into account in coming to a decision.

Re (i) above, despite the following facts- viz that

(a) the proposed clearfell site lies in close proximity to the Lough shore

(b) the site boundary nearest (eastern) to the Lough is approx 130m in length

(c) the forest road - which will presumably provide access to the site for felling and reforestation purposes, runs adjacent to the Lough shore,

(d) that the proposed project is likely to generate a high level of activity and noise over a prolonged period of time in close proximity to the Lough shore,

the Forestry Division Statement to the Appeal Committee concluded that "having reviewed the details of relevant Natura sites, their qualifying interests and conservation objectives in the context of sources and pathways for impact, the Department deemed that the project when considered in conjunction with other plans and projects will not give rise to the possibility of a significant effect on any of those Natura sites"...

That conclusion is further undermined by the facts that The Forestry Division failed to:

- Reveal what potential sources and pathways it took into consideration;
- indicate the basis on which it was determined that the sensitivity of the ecological receptors would not be affected by the proposed project
- appear to have referred the matter to any interested and expert parties; I refer particularly to NPWS and other ecologists.
- reveal the nature of the enquiry made to Cavan Co.Council, nor did it reveal the nature of any response received from same
- Reveal details of other plans and projects which it deemed appropriate to take into consideration, when determining in conjunction with the proposed project, what, if any, cumulative effects or impacts on Lough Oughter SAC/SPA could/might likely be generated.

I am therefore unable to concur with the above conclusion reached by the Forest Department due to the lack of transparency, hard facts and expert opinion which characterise the Screening procedure - matters which I consider are integral to that procedure given

- The proximity of the site and its access road to Lough Oughter,
- the importance of the Lough in an environmental context having regard to its dual designation as both a SAC and a SPA,
- and finally to the number and range of conservation objectives for the Lough across its SAC and SPA designations.

I also am unable to concur with the AA Screening Conclusion which states that having considered inter alia "potential pathways... and the location of the project outside of the Natura site... there is no possibility that this project will have a significant factor on this Natura site." I note that potential pathways include air emissions/disturbance generated by sound and noise movements or variations to localised climactic conditions generated for example, by loss of windbreaks. In the current case it should also be noted that although the project location lies outside the SAC/SPA boundary it still exercises an influence on the Lough due to its very close proximity to the Lough; it is not valid therefore to dismiss the project as not having any significant effects on the Lough simply because it lies outside the Lough boundary.

CONCLUSION

The project site lies in extreme proximity to Lough Oughter and associated Loughs complex - an important European/ Natura 2000 site noted for its conservation objectives as both a SAC and SPA. Although the project site has a small/modest area, the potential impacts on the Lough arising from the proposed clear felling and reforestation may be quite significant and perhaps well out of proportion to its scale - all as a result of the site's proximity to the Lough.

The Appropriate Assessment Screening carried out prior to the recommendation to grant the Licence and also the Forestry Division Statement to the F.A.Committee, fails I consider to demonstrate that the proposed project is not likely either individually or in combination with other plans and projects to have a significant effect on the integrity of Lough Oughter SAC/SPA in view of its conservation objectives .

There is therefore I consider overall an uncertainty regarding the impacts of the project on the Lough which requires to be resolved prior to granting any Licence for the proposed project That uncertainty can be resolved however were a Natura Impact Statement - constituting a targeted professional scientific examination of evidence and data by competent persons - to be provided . The NIS would classify any implications arising for Lough Oughter SAC/SPA from the proposed project, having regard to the Conservation Objectives for the Lough, and also facilitate inclusion of an appraisal of the project by NPWS in that NIS. Submission of an N.I.S can then be followed by a decision as to whether or not the project will adversely affect the integrity of the Lough Oughter complex having regard to its conservation objectives

Re "in combination effects" referred to in the appellant's submission, as I have noted there is a lack of transparency in regard to same. Any N.I.S submission however should be required to contain information on, and an assessment of same.

Following assessment of any N.I.S submitted, it should be possible to determine whether or not the proposed project will adversely affect the integrity of the European site having regard to its conservation objectives; that may then be followed by a grant or otherwise of a Licence.

Mary Cunneen
13.4.2020