



04 January 2021

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**Subject:** Appeal 566/2020 regarding licence KK06 FL0147

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) in relation to the above licence issued by the Minister for Agriculture, Food and the Marine. 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 all parties to the appeal.

#### **Background**

Licence KK06 FL0147 for felling and replanting of 2.22 ha at Blessington / Raheendonore, Co Kilkenny was issued by the Department of Agriculture Food and the Marine (DAFM) on 17 July 2020.

#### **Hearing**

A hearing of appeal 566/2020 was held by the FAC on 22 December 2020. FAC Members in attendance: Mr. Des Johnson (Chairperson), Mr. Pat Coman, Mr. James Conway, Mr. Vincent Upton

#### **Decision**

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, a consultant's report and any submissions received and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister for Agriculture, Food and the Marine regarding licence KK06 FL0147.

The proposal comprises 2.22 ha of clear-felling at Blessington / Raheendonore Co Kilkenny of 2 plots (0.04 ha 90% Sitka Spruce / 10% Lodge Pole Pine & 2.17 ha 96% Sitka Spruce / 4% Japanese Larch) and replanting is with 100% Sitka Spruce. The proposal application submitted on 02 December 2019 included a harvest plan document, a pre-screening report and sought 0.11 ha of open space. A further pre-screening document was submitted by the applicant dated 07 May 2020. The application was subject of a desk assessment by the DAFM, and there were referrals to Inland Fisheries Ireland (IFI) and to Kilkenny County Council for observations and there are no responses evidenced.

This is a relatively small site on an elevated saddleback at approximately c. 210m, soils comprise; Blanket Peats (14%), Lithosols, Regosols (1%), Peaty Gleys (52%), Podzols (Peaty), Lithosols, Peats (20%) & Surface

water Gleys, Ground water Gleys (12%). The slope is given as 'predominantly steep 15-30%'. The proposal is located in the Nore catchment, the Nore\_Sc\_120 Sub-Catchment, and the Nore\_250 Waterbody.

The DAFM carried out a screening for Appropriate Assessment regards European Sites within a 15 km radius of the proposal and screened out the River Barrow and River Nore SAC, the Thomastown Quarry SAC and the Blackstairs Mountains SAC for reasons of either separation distance or lack of pathway. The River Nore SPA was screened in due to the proximity of potential habitat for the species listed as the Special Conservation Interest of this Natura site. An Appropriate Assessment Report (AAR) and an Appropriate Assessment Determination (AAD) are dated 13 July 2020 and were reviewed by an external ecologist on 15 July 2020. The outcome of the AAD was that mitigations were required in case the site or areas directly adjacent to it are being used by the Kingfisher for feeding. The AAR noted siltation of the watercourse in particular will hamper the Kingfisher's ability to see its prey and therefore its foraging ability. The recommended mitigations are reflected in the licence conditions (h) (i) (j) (k).

Licence was issued on 17 July 2020, valid to 31 December 2022, and comprised what are considered standard conditions (a) to (g) and the additional conditions (h), (i), (j), (k) and (l) – these are detailed on the licence.

There is one appeal against the decision. The grounds contend that the Appropriate Assessment Screening did not comply with the decision of Finlay J in Kelly and that there has been no investigation as to whether the application site has complied with the requirements of EU law. Further grounds relate to issues outside of the remit of the FAC.

In a statement to the FAC in response to the appeal, the DAFM stated the proposal was subject to Appropriate Assessment Screening for European sites within 15 km from the project. The DAFM identified the possibility of the project having a significant effect on a screened European site (River Nore SPA 004233) and an Appropriate Assessment was carried out. The potential for the project to result in impacts on the Special Conservation Interest of the River Nore SPA 004233 was identified on a precautionary basis and site-specific measures prescribed by the DAFM to mitigate against such impacts ensure that individually the proposal will not prevent or obstruct the Special Conservation Interests of the European sites from reaching favourable conservation status, as per Article 1 of the EU Habitats Directive. The measures described in the application documentation, together with adherence to relevant environmental guidelines/requirements/standards and to the site-specific mitigation measures set in the AAR and AAD statement ensure that the proposed felling and reforestation project KK06-FL0147 will not result in any adverse effect on any European Site. Also, the potential for the proposal to contribute to an in-combination impact on the River Nore SPA 004233 was also considered and the DAFM determined, pursuant to Regulation 42(16) of the European Communities (Birds and Natural Habitats) Regulation 2011 (as amended) and based on objective information, that the project (KK06-FL0147), either individually or in-combination with other plans or projects, will not adversely affect the integrity of any European site. The site-specific mitigations identified in the AAR and AAD were attached as conditions of the licence issued for felling and reforestation project KK06-FL0147.

In considering the grounds of appeal, the FAC considered, in the first instance, the screening for appropriate assessment undertaken by the DAFM. The grounds of appeal do not identify any specific European sites, measures or effects of concern. The FAC sought and received a report from a consultant concerning the licence decision and appeal, and consideration of the Appropriate Assessment Screening, the AAR and the AAD, the report is available on the public file. Four European sites were identified within 15km from the proposal and screened for Appropriate Assessment by the DAFM. The sites are as follows and are confirmed in the Consultant's report; the Blackstairs Mountains SAC c. 12.96 km to the east, the Thomastown Quarry SAC c. 6.82 km to the west, the River Barrow and River Nore SAC c. 1.7 km to the south and the River Nore SPA c. 3.45 km to the southwest. The DAFM considered there was no requirement to extend the 15km zone in this instance and based on the nature, scale and location of the proposal the FAC concurred with this conclusion. The DAFM screened out three of the European sites and screened in the River Nore SPA for reasons of the proximity of potential habitat for the species listed as the Special Conservation Interest of this Natura site. The sole qualifying interest for the SPA is the Kingfisher.

The EPA and Geohive publicly available mapping facilities show the Kilmacshane River/Stream is north of the proposal and joins the SPA at c. 4.3 km distance. Also, the Upper Fidaun River runs South from where it rises some 300m south of the proposal from a mapped spring (25" map), and joins the Rathleen River and the River Barrow and River Nore SAC after c. 1.2km and it is a further 2.4 km to the SPA from there. The proposal is not within a Freshwater Pearl Mussel Catchment and there are no aquatic zones or relevant watercourses evidenced on site.

The Consultant's report included a screening for Appropriate Assessment. The report details that the proposal would be located c. 3.5 km from the designated River Nore SPA, and that a stream to the north of the proposal is not part of the main Nore water body although it is a tributary of the Nore, and the stream has not been designated as part of the SPA. Also, a mature coniferous forest is not a suitable nesting or foraging habitat for the Kingfisher. The report concluded an Appropriate Assessment was not required regards the SPA or any of the SAC sites based on the available information. The report screened out each of the European sites listed within the 15 km zone and concluded the proposal is clearly not necessary to or connected with the management of any Natura 2000 site. The report also considered for in-combination plans and projects and concluded that the proposed felling and replanting, of itself or in-combination with any other plans or projects, is not likely to have any significant effect on any Natura 2000 site, and that in these circumstances the carrying out of an Appropriate Assessment as referred to in Article 6(3) of the EU Habitats Directive is not required. In the report, the Consultant concludes that development in accordance with the licence as granted by the Department would not adversely affect the integrity of the River Nore SPA. The FAC examined the procedures and content of the DAFM's Appropriate Assessment Screening and having regard to the precautionary principle and the information contained in the Applicant's pre-screening report of 07 May 2020, considered the conclusions acceptable. The FAC examined the procedures adopted in the Appropriate Assessment Report (AAR) and Appropriate Assessment Determination (AAD) and found them to be satisfactory. The FAC also noted that specified mitigation measures included in the AAR and AAD have been incorporated into the licence by way of conditions. The FAC is satisfied from the evidence that there is no likelihood that the proposal on its own

or in combination with others plans and projects will have a significant effect on any European site and would not adversely affect the integrity of the River Nore SPA.

The EU EIA Directive sets out in Annex I a list of projects for which EIA is mandatory. Annex II contains a list of projects for which member states must determine through thresholds or on a case by case basis, or both, whether or not EIA is required. Neither afforestation nor deforestation are referred to in Annex I. Annex II contains a class of project specified as "initial afforestation and deforestation for the purpose of conversion to another type of land use" (Class 1 (d) of Annex II). The Irish Forestry Regulations 2017 (S.I. 191 of 2017), in relation to forestry licence applications, require the compliance with the EIA process for applications relating to afforestation involving an area of more than 50 Hectares, the construction of a forest road of a length greater than 2000 metres and any afforestation or forest road below the specified parameters where the Minister considers such development would be likely to have significant effects on the environment. The decision before the FAC relates to the felling and subsequent replanting of 2.22 ha of forest managed for commercial timber production. The FAC concluded that the felling and replanting of trees, as part of a forestry operation with no change in land use, does not fall within the classes referred to in the Directive, and is not covered by national regulations and that screening under the EIA Directive was not required in this case.

The consultant's Report, at the request of the FAC, examined the proposed development for the possibility of significant effects on the environment. The Report notes that forestry activities such as proposed would not be out of character visually or otherwise in this area which is characterised by agriculture and forestry and with a dispersed settlement pattern. The proposal in a rural area would have very little effect on the landscape or on the visual amenities of the area, and is well set back from public roads, even though the landscape in the area is indicated to be highly scenic / visually pleasing in the current Co. Kilkenny Development Plan. There would be some short-term inconvenience on local roads. There would be no significant effects on the environment due to water or air pollution, including emissions which might have a significant effect on climate change. There are no National Monuments or Protected Structures on the site and there would be no significant impact on cultural heritage. The possibility of significant effects on the environment can be ruled out.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, other submissions received, and a consultant's report available on the public file. The FAC is not satisfied that a serious or significant error or series of errors occurred in making the decision or that the decision was made without complying with fair procedure. In deciding to affirm the decision, the FAC considered that the proposed development would be consistent with Government policy and Good Forestry Practice.

Yours sincerely,



Pat Coman, on behalf of the Forestry Appeals Committee

## **FAC Case Ref No. 566/20**

## **DAFM Case Ref No. KK 06-FL-0147**

### *Details of application:*

The application is for the clear-felling and replanting of coniferous trees in a parcel of lands measuring 2.22 hectares at Blessington/Raheendonore in County Kilkenny. (The O. S. maps indicate the lands are in the townland of Raheendonore). The bulk of the trees to be felled are Sitka spruce and the trees to be planted are Sitka spruce. The application indicates a small area of 0.11 hectares being retained as open space.

Documents submitted with the application included a pre-application screening report for AA. The screening had indicated that there was a likelihood that the project would have a significant effect on the River Nore SPA. Also submitted with the application was a copy of the applicant's Harvesting Plan including Harvesting General Environmental Rules, Establishment General Environmental Rules and [REDACTED] Harvesting Safety Rules.

The plans submitted indicated the lands being located to the south of and a short distance from a stream to the north. The aerial photograph submitted indicates forestry to the north, east and south with open agricultural lands to the west.

### *Site location and site description:*

The lands are located within a larger forested area about half way between Thomastown to the west and Graignamanagh to the east. The lands area located in an upland area about 4.5 kilometres to the north of the village of Inistioge. Apart from the forestry to the north, east and south there is another forested area a short distance away to the west with a small intervening parcel of land in agricultural use. The nearest public road to the lands is to the northwest at a distance of about 600 metres. The area is served by a number of lanes and forest roads. There is a forest road abutting the eastern edge of the lands. This links to the public road network to the northeast.

The older O.S. maps indicate that the bulk of the lands are located above the 700-foot contour with the northwest corner being slightly below this. A spot height of 682 feet is indicated on what appears to have been a laneway at the northwest corner of the lands. A stream or drain is indicated flowing towards the southwest a short distance to the north of the larger forestry plantation. The project lands are indicated to have been a mixture of rough grazing and furze or whins at the time when the mapping was carried out.

The stream/drain to the north flows towards the southwest and later turns southwards. At the nearest point this stream is located about 130 metres from the northwest corner of the project lands. The stream joins the Nore River a short distance downstream of Brownsbarn, upstream of Inistioge. The EPA maps indicate that the lands are in the catchment of the Nore.

There are no national monuments indicated on the lands or in close proximity on the national inventory of such monuments. The nearest house is about 415 metres away to the north. The next closest house is about 575 metres away to the west-northwest.

*Decision of DAFM:*

The Department decided to grant a licence subject to 12 conditions (numbered a to k). Most of the conditions are of a standard variety which are imposed in most if not all such licences. 4 of the conditions, however, are specifically imposed in this case to control or limit any impacts of the River Nore SPA.

The conditions in question numbered (h) to (k) are

(h) Sediment traps must be installed at intervals and ideally as close as possible to the source of the sediment (DAFM 2015, DAFM 2019). Silt fences should comprise geotextile membrane when necessary, slotted into the ground, secured to a minimum of three posts (e. g. roofing nails wrapped around end posts), arranged in an arc, c. 1-1.5m apart, the centre post set slightly back, encouraging flow towards the centre and preventing flow by-passing, at a height of ~ 0.5 –0.75m above ground. Silt fences should be checked every month in wet weather in the first 4 years and repaired/upgraded if water is bypassing it, if torn, collapsed or not functioning. If full with silt, this should be removed to a dry, vegetated area upslope of the fence, away from the drain.

i) Do not remove or disturb any areas of scrub wet woodland, carr (woodland growing on wet ground or waterlogged soil usually dominated by alder or willow species) and thick scrub or woods on the site within 50 m of an aquatic zone or within 20 m of a relevant watercourse.

(j) Regarding any existing relevant watercourses (e. g. existing field drain), do not clean any section of such watercourses within 50 m of an aquatic zone

(k) Apply all water protection measures relating to setback, siltation cultivation, fertilisation, herbicide application, the location of onsite storage depots and the disposal of waste. The proposed works shall adhere to the Interim Standards for Felling & Reforestation (Oct 2019) and Environmental Requirements for Afforestation, December 2016 (DAFM, 2016).

The reason given for each of the conditions is

Reason: In the interest of the protection of water quality, protection of the environment and in the interest of protecting the Special Conservation Interest of the River Nore SPA 004233, as per the DAFM's Appropriate Assessment determination for KK06-FL0147.

*Grounds of appeal:*

The grounds of appeal are:

The Appropriate Assessment screening did not comply with the decision of Finlay J in Kelly.

Under the basic principles of EU law, the decision is invalid as the Minister is being a judge in his/her case.

There has been no investigation as to whether the application site has complied with the requirements of EU law.

According to the heads of the new bill the Minister has assumed control of the FAC.

(The grounds of appeal contain no further elaboration or clarification)

*DAFM response to appeal:*

It is submitted that Appropriate Assessment screening was carried out by DAFM for European sites within 15 km from the clear-fell and reforestation project submitted for licencing. Having reviewed the details of relevant European sites their qualifying interests and conservation objectives, the DAFM identified the possibility of the project having a significant effect on a screened European site (River Nore SPA 004233). As such, the clear-fell and reforestation project was screened in and an Appropriate Assessment carried out.

The AA Screening involved review of Special Conservation Interests and the Conservation Objectives of the above European site (as set out in the corresponding Conservation Objective documents available from the National Parks & Wildlife Service). These have also been considered in the AA Report and AA Determination Statement on file.

The potential for the project to result in impacts on the Special Conservation Interest of the River Nore SPA 004233 was identified on a precautionary basis and site-specific measures prescribed by the DAFM to mitigate against such impacts were described. The mitigations ensure that the proposed project itself (i. e. individually) will not prevent or obstruct the Special Conservation Interests of the European sites from reaching favourable conservation status, as per Article 1 of the EU Habitats Directive.

The measures described in the application documentation, together with adherence to relevant environmental guidelines/requirements /standards and to the site-specific mitigation measures set in the AA Report and AA Determination statement ensure that the proposed felling and reforestation project KK06-FL0147 will not result in any adverse effect on any European Site.

In relation to KK06-FL0147, the potential for the proposed project to contribute to an in-combination impact on the River Nore SPA 004233 was considered by DAFM. It was concluded that the proposed felling and reforestation project, when considered on its own, will not result in any residual adverse effect on the screened in European site and associated Special Conservation Interests and Conservation Objectives.

There is therefore no potential for the proposed works to contribute to any cumulative adverse effects on this European site, when considered in-combination with other plans and projects.

DAFM concluded that the identified potential pathways for any adverse effect are robustly blocked using avoidance, appropriate design and the implementation of best practice, and through the mitigation as set out within the AA Report and AA Determination Statement for KK06-FL0147.

DAFM determined, pursuant to Regulation 42(16) of the European Communities (Birds and Natural Habitats) Regulation 2011 (as amended) and based on objective

information, that the project (KK06-FL0147), either individually or in-combination with other plans or projects, will not adversely affect the integrity of any European site. The site-specific mitigations identified in the Report and AA Determination Statement were attached as conditions of the licence issued for felling and reforestation project KK06-FL0147.

*Screening for Appropriate Assessment:*

There are 4 European sites located within 15 kilometres of the proposed project. The sites in question are:

The Blackstairs Mountains SAC located, at the closest point, 12.96 kilometres to the east of the project lands.

The Thomastown Quarry SAC located, at the closest point, 6.82 kilometres to the west of the project lands.

The River Barrow and River Nore SAC located, at the closest point, 1.7 Kilometres to the south of the project lands. (The closest point along the hydrological connection to the SAC from the closest point on the stream to the north is approx. 4.174 kilometres).

The River Nore SPA, located, at the closest point, 3.45 kilometres from the project lands.

The Blackstairs Mountains SAC is located 12.96 kilometres away to the east. The SAC is located in the catchment of the Barrow and the Slaney rivers. The project lands are in the catchment of the River Nore. There is no downstream hydrological connection from the project lands to the SAC. The qualifying interests of the SAC are

Northern Atlantic wet heaths with *Erica tetralix* [4010]

European dry heaths [4030]

Having regard to the separation distance, the absence of any hydrological or other potentially impacting pathway and the nature of the qualifying interests the proposed small-scale tree felling and replanting will have no impact on the qualifying interests or the conservation objectives of the SAC. The project is accordingly not likely to have any significant effect on the Blackstairs Mountains SAC and accordingly Appropriate Assessment is not required.

The Thomastown Quarry is located to the west at a minimum distance of about 6.82 kilometres from the project lands. The SAC is located in the Nore catchment but a considerable distance upstream of the project lands. There is no downstream hydrological connection to the SAC from the lands. The qualifying interests of the SAC are

Petrifying springs with tufa formation (*Cratoneurion*) [7220]

Having regard to the absence of any downstream connection from the lands to the SAC, to the separation distance involved and to the small-scale tree felling and replanting proposed, the project will not have any effect on water flow or springs in the SAC. The proposed project will accordingly not have any significant effect on the Thomastown Quarry SAC.

The River Barrow and River Nore SAC is located at the closest point about 1.7 kilometres to the south of the project lands. The stream draining the area, however



flows to the southwest initially, then southwards to the Nore. The distance to the SAC along the stream system (which does not adjoin or abut the project lands) is about 4.174 kilometres. The qualifying interests of the SAC are

Estuaries [1130]

Mudflats and sandflats not covered by seawater at low tide [1140]

Reefs [1170]

Salicornia and other annuals colonising mud and sand [1310]

Atlantic salt meadows (*Glauco-Puccinellietalia maritima*) [1330]

Mediterranean salt meadows (*Juncetalia maritimi*) [1410]

Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation [3260]

European dry heaths [4030]

Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels [6430]

Petrifying springs with tufa formation (*Cratoneurion*) [7220]

Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles [91A0]

Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*) [91E0]

*Vertigo moulinsiana* (Desmoulin's Whorl Snail) [1016]

*Margaritifera margaritifera* (Freshwater Pearl Mussel) [1029]

*Austropotamobius pallipes* (White-clawed Crayfish) [1092]

*Petromyzon marinus* (Sea Lamprey) [1095]

*Lampetra planeri* (Brook Lamprey) [1096]

*Lampetra fluviatilis* (River Lamprey) [1099]

*Alosa fallax fallax* (Twaite Shad) [1103]

*Salmo salar* (Salmon) [1106]

*Lutra lutra* (Otter) [1355]

*Trichomanes speciosum* (Killarney Fern) [1421]

*Margaritifera durrovensis* (Nore Pearl Mussel) [1990]

The conservation objectives are generally to maintain or restore the favourable conservation condition of the qualifying interests. Many of the qualifying interests relate to coastal or seashore features located a considerable distance downstream of Inistioge and New Ross. The Nore Pearl Mussel is the most sensitive of the species listed. This species, however, is confined to an area of the River Nore

upstream of Ballyragget which is located a considerable distance upstream of where the stream draining the project lands joins the Nore. (There are also no sites indicated as habitats of the Desmoulin's whorl snail downstream of the location where the stream draining the area joins the SAC) (Map no 7 of the conservation objectives on NPWS site)

Having regard to the small-scale of the project, the absence of any direct stream connection from the lands to the Nore system and to the hydrological distance from the stream draining the area to the SAC I consider that the proposed project would not cause any water pollution problems in the SAC which would have an impact on any of the qualifying interests and the conservation objectives for these interests.

The River Nore SPA has as its special conservation interest the Kingfisher. The SPA is located at the closest point about 3.45 kilometres to the south of the project lands. The distance to the SPA along the hydrological connection from the stream to the north is about 4.25 kilometres. Whilst the birds can obviously fly the reason for carrying out Appropriate Assessment as indicated in the AA carried out by the Department and the reasons for the conditions imposed as set out above, relate essentially to a possible danger of water pollution. The conservation objectives for the SPA are to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for the site.

The AA carried out by the Department was done on the basis that there could be a possible effect "due to the location of the project within the Natura site". This does not appear to me to be correct as the project would be located about 3.5 kilometres from the designated SPA. I also note that, in the Department's assessment, it is stated that "The project site is located 150m from the nearest water body of concern, which is a considerable distance considering the qualifying interest feature of concern". This implies to me that it was assumed that the stream to the north was included in the SPA. (I note that the applicant, in its pre-screening report, had also concluded that Appropriate Assessment was required due to possible effects on the River Nore SPA).

I note the following rationale for Appropriate Assessment from the detailed internal report of 13/7/2020 "Kingfishers will usually stay along the main bodies of rivers but may use adjacent watercourses as part of their foraging territory. While the project site is approx. 140m away from the main Nore \_250 water body, there may be closer watercourses with feeding potential". The stream to the north is not the main Nore water body although a tributary of the Nore. The stream has not been designated as part of the SPA. A mature coniferous forest is not a suitable nesting or foraging habitat for the Kingfisher.

In the circumstances as set out above and having regard to the distance of the lands from the designated SPA, to the small-scale of the project and to the special interests and conservation objectives for the SPA I consider that the project proposed of itself or in-combination with other projects would not be likely to have any significant effect on the River Nore SPA. In this assessment I have had regard to the fact that there is a licence for felling and replanting of a small area to the north (closer to the stream) and a larger area to the southeast as indicated on the aerial photograph submitted with the application. (The contours suggest that drainage from

the lands to the southeast is likely to be at least partly if not totally towards the south to a different stream although my conclusions do not depend on this). I have also had regard to the precautionary principle in my conclusions.

Having regard to my conclusions as set out above I do not consider that the 4 conditions imposed to protect the SPA are necessary and my conclusions have been based on no conditions being imposed to negate or mitigate effects on the SPA. If the Committee determine that Appropriate Assessment is required, I consider that it would be reasonable for it to conclude that development in accordance with the licence as granted by the Department would not adversely affect the integrity of the River Nore SPA. (As indicated above this would, in my opinion, apply with or without the 4 conditions which specifically refer to this SPA).

I do not have detailed drawings indicating the locations of other forestry related developments but as I consider that the proposed project of itself would have no effect on any Natura site, I consider that there would not be any significant in-combination effect on any Natura 2000 site. (I note that the original application referred to the clear felling of 12.36 hectares being licenced to the applicant in the vicinity. In the more detailed pre-screening report reference is made to 64.28 hectares being licenced to the applicant within 1.5 kilometres and 57.81 hectares being licenced to others within 1.5 kilometres. (This gives a total of 122.09 hectares within 1.5 kilometres being licenced for felling and replanting). The pre-screening report also refers to licences having been granted for 3 forest roads. (The total length is indicated to be 2.66 metres, which presumably is an error).

In checking myplan.ie I find few planning permissions have been granted for development in the vicinity in the past 10 years. This is not surprising as the lands are set well back from any public road. The closest permitted development was for a dormer dwelling on lands about 700 metres away to the northwest. Planning permission was granted on 3/11/2014 and the permission was extended to 18/10/2024 by a later application (Case references 14290 and 19622). The next closest permissions were for agriculture related developments on sites to the south and northeast. (Cases reference 17721 and 15362) Both of these developments would be more than 1 kilometre from the project lands. None of the permitted developments referred to would have in-combination effects with the tree felling and replanting now proposed.

In the above assessment I have not considered the normal good felling practices referred to in the documentation and in the licence in forming my conclusions. I consider, however, that compliance with the various guidelines etc referred to would re-enforce my conclusions. I also consider that the practices referred to are designed to protect the local environment, as they are general standards for all felling, and are not designed to prevent any significant effect on the Natura 2000 sites. My comments on the 4 conditions included which refer to the River Nore SPA are set out above.

The appellant submits that the screening carried out did not comply with the Court decision in the Kelly case. There is no indication as to why it is considered that there

is non-compliance. The decision in the Kelly case was made on the basis of the Appropriate Assessment carried out by An Bord Pleanála rather than on the basis of the screening carried out in that case.

The proposal is clearly not necessary to or connected with the management of any Natura 2000 site. I conclude that the proposed felling and replanting, of itself or in combination with any other plans or projects, is not likely to have any significant effect on any Natura 2000 site. In these circumstances the carrying out of an Appropriate Assessment as referred to in Article 6(3) of the EU Habitats Directive is not required.

*Screening for Environmental Impact Assessment (EIA):*

In my screening for EIA I have regard to the requirements contained in the EU Directive (Directive 2011/92/EU as amended by Directive 2014/52/EU), in Irish regulations transposing the Directive into Irish law and to the Guidance for Consent Authorities regarding Sub-threshold Development published by the Department of the Environment in August 2003. I have had regard to the characteristics of the project, the location of the project (including the environmental sensitivity of the area) and the types and characteristics of potential impacts of the development as referred to in Annex III of the Directive. I have also taken account of my conclusions, set out above, in relation to the likely impact of the development on any Natura 2000 site.

The EU Directive sets out, in Annex I, a list of projects for which EIA is mandatory. Annex II contains a list of projects for which member states must determine through thresholds or on a case-by-case basis (or both) whether or not EIA is required. Neither afforestation nor deforestation (nor clear-felling) are referred to in Annex I. Annex III contains a class of project specified as "initial afforestation and deforestation for the purpose of conversion to another type of land use". (Class 1 (d) of Annex II). The Irish Regulations, in relation to forestry licence applications, require the compliance with the EIA process for applications relating to afforestation involving an area of more than 50 Hectares, the construction of a forest road of a length greater than 2000 metres and any afforestation or forest road below the specified parameters where the Minister considers such development would be likely to have significant effects on the environment. It appears to me that felling of trees and subsequent replanting, as part of a forestry operation with no change in land use, does not fall within the classes referred to in the Directive, and is similarly not covered by the Irish regulations (S.I. 191 of 2017). I will, however, consider the likely effects of the proposal on the environment.

The site is located in a rural area where the predominant land use is agriculture with some forestry but with forestry being predominant locally in the current case. Forestry by its nature involves afforestation, thinning, clear-felling and re-planting. Such activities are normal and not out of character visually or otherwise in an area

such as that in question. The trees to be felled are set well back from public roads and are a considerable distance from existing houses. They are located adjacent to other forested lands. The project would have very little effect on the landscape or on the visual amenities of the area as perceived by local residents or people travelling through the area. I consider that the trees to be felled are not of such exceptional visual significance or value as to be considered essential or vital components of the landscape. I consider that the felling and replanting proposed would not have a significant impact on the landscape of the area although the landscape in the area is indicated to be highly scenic / visually pleasing in the current Co. Kilkenny Development Plan.

The felling will give rise to the transport of timber on the local roads. This will cause some inconvenience in the short term but this is an inevitable consequence of the afforestation and would not of itself result in such likely significant effects on the environment as to require compliance with the full Environmental Impact Assessment process. I also consider that the tree felling and re-planting proposed, in compliance with the standard conditions referred to, would not be likely to give rise to significant effects on the environment due to water or air pollution, including any emissions which might have significant effect on climate change.

There are no National Monuments located on the project lands. There are also no protected structures or remains of former buildings on the lands. The project now in question would not have any significant impact on cultural heritage.

I consider that the felling proposed does not come within the classes of project covered by the EU EIA Directive. I also consider that the proposed development would not be likely to give rise to significant effects on the environment of itself or cumulatively with other projects. I consider that the possibility of significant effects on the environment can be ruled out on the basis of this preliminary screening.

*Overall conclusion:*

I conclude that the proposed project would not be likely to have significant effects on the environment and the carrying out of EIA is not required. I also conclude that the project individually, or in combination with other plans or projects, is not likely to have any significant effect on any Natura 2000 site, having regard to the reasons for designating the sites and their conservation objectives.

Padraic Thornton

15/12/ 2020