



An Coiste um Achomhairc
Foraoiseachta

Forestry Appeals Committee

23 December 2020

[REDACTED]
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[REDACTED]

Our ref: 565/2020

Subject: Appeal in relation to felling licence KY05 FL0050

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine (DAFM) in respect of licence KY05 FL0050.

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 KY05 FL0050 was granted by the Department on 15 July 2020.

Hearing

The FAC carried out a hearing of appeal 565/2020 on 22 December 2020. The FAC comprised; Mr Des Johnson (Chairperson), Mr James Conway, Mr Vincent Upton and Mr Pat Coman

Decision

The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including application details, processing of the application by DAFM, the grounds of appeal, and a consultant's report sought by the Committee, before deciding to confirm the decision to affirm this licence (Reference KY05-FL0050).

The proposal is for the clearfell and restocking of a stated site area of 12.51ha at Glanawaddra/Knockyeala, Co. Kerry. The forest is currently comprised of Sitka spruce and Japanese larch planted in 1974 and 1984. Restocking would be with 90% Sitka Spruce, 5% Alder and 5% Birch. Soils are stated to be Blanket Peat. The project lands are in the Maine River catchment. A stream flows south-west through the project lands (Brown Flesk River) and this joins the Maine River which outflows into Castlemaine Harbour. Other small streams and impeded drains are indicated on old OS maps.

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The DAFM referred the application to Kerry County Council, National Parks and Wildlife Service (NPWS) and Inland Fisheries Ireland (IFI). The only response on file is from IFI and this recommended that, in addition to implementing the Guidelines for Harvesting, conditions are required in respect of the protection of water.

In processing the application, the DAFM carried out a screening for Appropriate Assessment for Natura 2000 sites within 15km. This screened out the following sites:

- Blackwater River (Cork/Waterford) SAC
- Lower River Shannon SAC
- Killarney National Park, Macgillycuddy's Reeks and Caragh River SAC

In the case of the first listed SAC, this is screened out for Appropriate assessment for reasons of being in a separate water body to the proposed development with no upstream hydrological connection and lack of pathway for the transport of effects. In the case of the other two SACs, these are ruled out for Appropriate Assessment for reason of no upstream connection and no hydrological pathway. The following site is screened in for Appropriate Assessment:

- Stack's to Mullaghareirk Mountains, West Limerick Hills & Mount Eagle SPA

DAFM produced an Appropriate Assessment Report dated 17 June 2020 and ecologically reviewed on 14 July 2020. This included an Appropriate Assessment screening that omitted the Killarney National Park, Macgillycuddy's Reeks and Caragh River SAC but included Castlemaine Harbour SAC and ruled it out for Appropriate Assessment for reason of the scale and nature of the activity, its interaction with and hydrological distance (38km) from the SAC. It confirms the ruling out of the other two listed SACs for Appropriate Assessment. An assessment is made of the SPA by listing the qualifying interest (Hen Harrier), conservation objectives and the potential for adverse effects arising from the proposed development on the qualifying interest. The report lists potential impacts - direct and indirect, short term and long term, and operational. It concludes that the project area does not constitute a suitable Hen Harrier foraging habitat but that, once harvested, the harvest block may provide suitable foraging habitats until canopy closure (c. 10-15 years). Site specific mitigation measures are recommended prohibiting potential disturbance during the Hen Harrier breeding season (1 April – 15 August), and requiring adherence to an agreed protocol in respect of breeding Hen Harriers, and the planting of a broadleaf strip along the Brown Flesk_10 water body to provide for prey species for the Hen Harrier. In-combination effects are considered including planning permissions (mostly for one-off dwellings and agricultural buildings) and other forestry projects – 4 afforestation, 2 roads, 8 private felling and 6 Coillte felling licences.

The DAFM made a Determination in respect of Appropriate Assessment dated 17 June 2020 and ecologically reviewed on 14 July 2020. This determines that, based on best scientific knowledge in the field, the proposed activity individually or in combination with other plans or projects, will not adversely affect the integrity of any European site, having regard to their conservation objectives, and will not affect the preservation of European sites at favourable conservation status if carried out in accordance with the specific mitigation measures. There is no reasonable scientific doubt remaining as to the absence of adverse effects on the integrity of any European sites.

The FAC noted that the Appropriate Assessment Determination had been completed and ecologically reviewed prior to the making of the decision to grant the licence.



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The licence was issued on 15 July 2020 and is exercisable until 31 December 2022. It is subject to standard conditions plus three additional conditions for reason of protecting the Hen Harrier (the site is in a SPA with a Red Zone for Hen Harriers) and other conditions relating to the protection of water quality.

There is a single appeal against the decision to grant the licence. The grounds contend that the Appropriate Assessment does not comply with the Court judgment *Finlay J in Kelly*, the decision is invalid as the Minister is being judge in his/her own case, there was no investigation as to whether the application site complied with the requirements of EU law, and the Minister has assumed control of the Forestry Appeals Committee.

In response the DAFM state that the application was subject to the DAFM's Appropriate Assessment screening procedures and all Natura 2000 sites within 15km were assessed. One site – the Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA – was screened in for Stage 2 Appropriate Assessment in accordance with the Precautionary Principle, site specific mitigation measures in respect of the protection of the Hen Harrier were recommended in the Stage 2 assessment, and an Appropriate Assessment Determination was made, concluding that the proposed development individually, or in combination with other plans or projects, would not affect the integrity of any European site. The recommended site-specific mitigation measures were included as conditions to the licence granted.

Having regard to the nature of the grounds of appeal, the FAC sought a report (hereafter referred to as the Report) by an independent consultant in relation to this proposal and, in particular, a Stage 1 screening for Appropriate Assessment, and Stage 2 Appropriate Assessment in accordance with the provisions of Article 6(3) of the Habitats Directive (92/43/EEC), and an examination of the proposed development in the context of the requirements (if any) of the EIA Directive. The Report, dated 18 December 2020, was considered by the FAC in coming to its decision and a copy of the Report is contained in the public file.

The Report concludes that the proposal is not necessary to or connected with the management of any Natura 2000 site, and the FAC agrees with this conclusion. The Report identifies four Natura 2000 sites within a radius of 15km, namely the Lower River Shannon SAC (separation 7.3km to north), Killarney National Park, MacGillycuddy's Reeks and Carragh River Catchment SAC (separation 7.3km to the south-west), Blackwater River (Cork-Waterford) SAC (separation 3.63km to the east) and Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (within the project lands). Qualifying interests are listed along with conservation objectives for each site. The three SACs are ruled out for Stage 2 assessment for reasons relating to the project lands being in different river catchments, absence of downstream hydrological connection or other pathway, and separation distances. The report concludes that, in accordance with the Precautionary Principle, the SPA should be subject to Stage 2 assessment. Following assessment, the Report Determines that the proposed felling and replanting of itself or in combination with other plans or projects, is not likely to have any significant effect on any Natura 2000 site other than the Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA. It further determines that, subject to compliance with the conditions of the

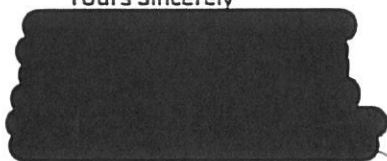
licence imposed in the licence, the felling and replanting would not adversely affect the integrity of this SPA.

In regard to the grounds of appeal, the FAC considers that these do not refer to any specific significant or serious error in the procedures followed by the DAFM in the Appropriate Assessment screening, the Appropriate Assessment Report or the Appropriate Assessment Determination. While the FAC noted that the DAFM had considered the Castlemaine Harbour SAC, but not the Killarney National Park, Macgillycuddy's Reeks and Carragh River Catchment SAC, in its original screening, it noted that both sites had been ruled out for Stage 2 Appropriate Assessment between the original screening and the Appropriate Assessment Report. The consultant's Report considered the Castlemaine Harbour SAC and found no likelihood of significant effects on the qualifying interests. The FAC is satisfied that the DAFM conclusions in respect of both of the SAC sites are correct. The FAC further considered that the procedures followed by the DAFM in reaching its Determination were satisfactory and consistent with the requirements of Article 6(3) of the Habitats Directive, and that the Determination is sound. The FAC noted that the consultant's Report reached a similar conclusion in respect of the Stage 2 Appropriate Assessment.

The consultant's Report, at the request of the FAC, examined the proposed development for the possibility of significant effects on the environment arising. 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 project would have very little effect on the landscape or on the visual amenities of the area. 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 on the basis of preliminary screening.

In deciding to affirm the decision to grant the licence, the FAC is satisfied that no serious or significant error occurred in the making of the decision by the DAFM and that fair procedures were complied with. The FAC considers that the proposed development is consistent with Government policy and Good Forestry practice.

Yours Sincerely



Pat Coman, on behalf of the FAC

FAC Case Ref 565/2020

DAFM Case Ref KY 05 – FL0050

Details of application:

The application is for the clear felling and replanting of a parcel of land comprising of 12.51 hectares. The trees to be felled are coniferous trees and the re-stocking is to be 90% Sitka spruce 5% Alder and 5% Birch. The restocking is to be carried out by windrowing and mounding.

Location and details of project lands:

The lands are located in the townland of Glanawaddra in an upland rural area in east Co. Kerry a short distance from the border with Co. Cork. The lands are located on the north west side of a local road linking Ballydesmond in Co. Cork to Castleisland in Co. Kerry. The lands are about 4 kilometres northwest of Ballydesmond and 10 kilometres southeast of Castleisland.

Land uses in the area are a mixture of forestry and agriculture with forestry being the predominant use in the vicinity of the project lands. The lands are effectively surrounded by lands in forestry use. There are very few houses in close proximity. The nearest house is located to the southeast at a distance of about 170 metres from the project lands. The next closest houses are 2 located close together about 500 metres away to the northwest i. e. in the Castleisland direction. These 2 houses are located on the northeast side of the local road i. e. on the same side of the road as the project lands.

A stream flows, south-westwards, through the lands. This stream is known as the Brown Flesk River This river flows generally westwards north of Faranfore as the Maine River which flows through Castlemaine. It flows into the Atlantic through Castlemaine Harbour north of Killorglan. The project lands are in the catchment of the Maine River.

The AA screening carried out indicates the top soil is of Blanket Peat. The old O. S. maps indicate lands with impeded drainage. The maps indicate a smaller stream flowing from the east generally along the southern boundary of the lands and joining the main stream a short distance back from the public road. Another stream flows southwards through lands to the west and also joins the main stream before the bridge under the local road. The project lands rise upwards towards the north. There is a dip in the local road at the location where the stream crosses the road. The road rises to both the north and south from this point. A spot height and bench mark close to or at the bridge indicate heights of 730 and 725 feet AOD respectively.

The old O. S. maps indicate what appears to be a minor road or laneway along the western edge of the lands. This linked the road to the southwest with that to the north. A track still appears to exist at this location. There is also a forest road along the eastern boundary of the lands.

There are no national monuments or protected structures within the project lands or in the near vicinity. The O. S. maps indicate that there was, at one time in the past, a small building in or close to the southern end of the lands. There are also a number of lime kilns located in the general area but not within the project lands. The local road to the southwest is an extremely straight road at this location. I consider that it may possibly have been constructed or realigned as a famine relief scheme.

Decision of Department:

The Department decided to grant a licence subject to 19 conditions. The bulk of the conditions are of a standard variety requiring compliance with standard forest service requirements, guidelines and standards. 3 of the conditions have been imposed to protect the Hen Harrier as the lands are located in an area which is designated as a Special Protection Area. The conditions in question are numbers (i), (j) and (k). The conditions are

(i) The proposed felling site lies within a Red (Breeding) Zone for Hen Harrier. As set out in the Forest Service document "Procedures regarding disturbance operations and Hen Harrier SPAs", specific procedures, agreed with National Parks & Wildlife Service, apply to disturbance operations within SPAs designated for Hen Harrier.

Disturbance operations include:

- timber felling (thinning, clearfell)
- timber extraction to roadside
- timber loading at roadside
- mechanical cultivation for both afforestation and reforestation
- forest road construction (and associated developments)
- the driving of fencing posts
- any other operation(s) the Forest Service may deem as creating disturbance.

Regarding sites within or partially within a Red Area, no disturbance operation(s) associated with the licence is to take place during the Hen Harrier breeding season (1st April to 15th August, inclusive). To do so will lead to the immediate cancellation of the licence (where trees remain standing) and may represent an offence under the Birds & Habitats Regulations 2011. If you intend to undertake any timber felling and associated disturbance operation(s) during the Hen Harrier breeding season within a licensed site within or partially within a Red Area, a new felling licence application must be submitted in relation to the site, together with a survey report setting out the results of a required habitat or breeding survey, as set out in the Forest Service document "Procedures regarding disturbance operations and Hen Harrier SPAs". The application will then be subjected to the Forest Service Appropriate Assessment Procedure before a decision is taken on issuing a new felling licence.

(j) Plant a minimum of three rows of broadleaves along Brown Flesk_010 water body. Reason: In the interest of the protection of water quality, protection of the environment and to ensure a sufficient habitat corridor exists for prey species of the Hen Harrier.

(k) Of particular note, the proposed works shall adhere to: Appendix 21 of the Forestry Standards Manual (DAFM, 2015), which sets out an agreed protocol regarding breeding Hen Harrier and potential disturbance operations, developed by the Forest Service of the DAFM and the National Parks & Wildlife Service (NPWS). Reason: In the interest of sustainable forest management and protection of the environment.

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 in considering Felling licence application KY05-FL0050, information submitted by [REDACTED] in the form of maps (GIS and softcopy), harvesting and establishment operational procedures as well as an Appropriate Assessment Pre-screening Report and associated Pre-screening Report methodology document were considered.

The 12.51 ha felling and reforestation project licenced as KY05-FL0050 has been subject to the DAFM's AA Screening procedure. The related AA screening document is on file. 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 (Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA 004161). 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 sites (as set out in the 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 Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA 004161 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 KY05-FL0050 will not result in any adverse effect on any European Site.

In relation to KY05-FL0050, the potential for the proposed project to contribute to an in-combination impact on the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA 004161 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. 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 KY05-FL0050.

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 (KY05-FL0050), 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 KY05-FL0050.

Screening for Appropriate Assessment and Appropriate Assessment where required:

There are 4 Natura 2000 sites located, at least in part, within 15 kilometres of the project lands. The sites in question are:

The Lower Shannon SAC located, at the nearest point, about 7.4 kilometres to the north of the project lands.

The Killarney National Park, MacGillycuddy's Reeks and Carragh River Catchment SAC located, at the nearest point, about 7.3 kilometres to the southwest of the project lands.

The Blackwater River (Cork-Waterford) SAC located, at the nearest point about 3.63 kilometres to the east of the project lands.

The Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA within which the project lands are located.

The nearest parts of the Lower Shannon SAC are located to the north and northeast. These parts of the SAC are located in the catchment of the Feale river which flows through Abbeyfeale and Listowel. The catchment drains to the Atlantic south of Ballybunion. The project lands, however are on the south side of the catchment divide and they drain to the Maine River which flows to Castlemaine Bay. There is no downstream connection from the project lands to the Lower Shannon SAC.

The qualifying interests of the Lower Shannon SAC are:

Sandbanks which are slightly covered by sea water all the time [1110]

Estuaries [1130]

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

Coastal lagoons [1150]

Large shallow inlets and bays [1160]

Reefs [1170]

Perennial vegetation of stony banks [1220]

Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]

Salicornia and other annuals colonising mud and sand [1310]

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

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

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

Molinia meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*) [6410]

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

Margaritifera margaritifera (Freshwater Pearl Mussel) [1029]

Petromyzon marinus (Sea Lamprey) [1095]

Lampetra planeri (Brook Lamprey) [1096]

Lampetra fluviatilis (River Lamprey) [1099]

Salmo salar (Salmon) [1106]

Tursiops truncatus (Common Bottlenose Dolphin) [1349]

Lutra lutra (Otter) [1355]

The conservation objectives are generally to maintain and/or restore the favourable conservation condition of the habitats and species for which the site has been designated. In the absence of any hydrological or other potentially impacting pathway and having regard to the separation distance the proposed tree felling and replanting would not have any impact on this SAC. The project would accordingly not be likely to have a significant effect on the Lower Shannon SAC.

The Killarney National Park, MacGillycuddy's Reeks and Carragh River Catchment SAC is located to the south and southwest at the closest point about 7.3 kilometres from the project lands. The SAC is located in the catchment of the Laune River. There is no downstream hydrological connection from the lands to this SAC. The qualifying interests for the SAC are

Oligotrophic waters containing very few minerals of sandy plains (*Littorelletalia uniflorae*) [3110]

Oligotrophic to mesotrophic standing waters with vegetation of the *Littorelletea uniflorae* and/or *Isoeto-Nanojuncetea* [3130]

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

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

European dry heaths [4030]

Alpine and Boreal heaths [4060]

Juniperus communis formations on heaths or calcareous grasslands [5130]

Calaminarian grasslands of the *Violetalia calaminariae* [6130]

Molinia meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*) [6410]

Blanket bogs (* if active bog) [7130]

Depressions on peat substrates of the *Rhynchosporion* [7150]

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]

Taxus baccata woods of the British Isles [91J0]

Geomalacus maculosus (Kerry Slug) [1024]

Margaritifera margaritifera (Freshwater Pearl Mussel) [1029]

Euphydryas aurinia (Marsh Fritillary) [1065]

Petromyzon marinus (Sea Lamprey) [1095]

Lampetra planeri (Brook Lamprey) [1096]

Lampetra fluviatilis (River Lamprey) [1099]

Salmo salar (Salmon) [1106]

Rhinolophus hipposideros (Lesser Horseshoe Bat) [1303]

Lutra lutra (Otter) [1355]

Trichomanes speciosum (Killarney Fern) [1421]

Najas flexilis (Slender Naiad) [1833]

Alosa fallax killarnensis (Killarney Shad) [5046]

In the absence of any hydrological connection from the project lands downstream to the SAC or any other potentially impacting pathway and having regard to the separation distance I consider that the proposed project would not have any impact on the conservation objectives for the habitats and species listed above. The conservation objectives are generally to maintain and/or restore the favourable conservation condition of the habitats and species referred to. In these circumstances I consider that the project would not be likely to have any significant effect on the Killarney National Park, MacGillycuddy's Reeks and Carragh River Catchment SAC.

The Blackwater River (Cork-Waterford) SAC is located to the east at a minimum distance of about 3.6 kilometres from the project lands. The qualifying interests are

Estuaries [1130]

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

Perennial vegetation of stony banks [1220]

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]

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]

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]

The conservation objectives are to maintain or restore the favourable conservation condition of the habitats listed. The SAC is in the Blackwater (Cork-Waterford) catchment and there is no hydrological downstream connection from the project lands to this SAC. In the absence of such a connection or any other potentially impacting pathway and having regard to the separation distance I consider that the proposed tree felling and replanting is not likely to have any significant effect on the River Blackwater (Cork-Waterford) SAC.

The Mullaghareirk Mountains, West Limerick Hills and Eagle Mountain SPA comprise a large mountainous and upland area in west Co. Limerick, west Co. Cork and in east Co. Kerry. The special interest for which the SPA has been designated is the Hen Harrier. The conservation objectives are "To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA".

The SPA in question has been designated specifically for the Hen Harrier and the documentation indicates that the particular part of the SPA where the site is located is identified as a "Red Area" or one where breeding by the Hen Harrier is likely. Tree felling and replanting operations are likely to have a significant effect on nesting birds due to actual disturbance noise etc. In these circumstances I consider that it was reasonable and in compliance with the precautionary principle for the Department to conclude that the project was likely to have a significant effect on the SPA having regard to its conservation objectives. A second stage Appropriate Assessment is accordingly required.

A mature coniferous forest is not a suitable breeding or foraging habitat for the Hen Harrier. A pre-thicket plantation is however a habitat of choice for breeding Hen Harriers and is also more useful for foraging than a mature forest with a closed canopy. Condition number (j) requires the planting of broadleaf trees along the sides of the Brown Flesk River. This is to make the area more attractive for birds which the Hen Harrier would prey on. The project, as proposed and conditioned in the licence, would accordingly make the lands more suitable for the Hen Harrier as a breeding area and a foraging area although the suitability for breeding would be temporary as the replanted area would eventually close in later in the forest cycle.

Condition (i) of the licence requires that disturbing activities listed shall not take place during the breeding season. This condition should protect any birds nesting in the lands from disturbance and gives additional weight to the argument that the felling and replanting proposed, if carried out in accordance with the conditions included in the licence, would not adversely affect the integrity of the SPA. I consider that it was reasonable for the Department to so conclude in its decision to grant a licence.

Condition number (k) also deals with the potential impact on the Hen Harrier. The condition requires adherence to the procedures set out in Appendix 21 of the DAFM Forest Standards Manual 2015. Appendix 21, however, deals mainly with procedural matters and it sets out guidelines for surveys etc to be carried out in the event of felling being carried out during the Hen Harrier breeding season. Condition (k) accordingly does not appear to add much if anything to the restrictions and controls contained in conditions (i) and (j). Condition (i) prohibiting disturbance activities during the breeding season is of greatest significance.

Subject to compliance to the conditions of the licence I consider that the proposed tree felling and replanting would not adversely affect the integrity of the Mullaghareirk Mountains, West Limerick Hills and Eagle Mountain SPA. I consider that if disturbance activities were to take place during the breeding season in the project lands and in nearby felling areas there could also be some in-combination effects. Compliance with the conditions, however, would rule out disturbance activities in the project lands during the breeding season. This would rule out in-combination effects as well as direct effects on the conservation objectives for the SPA.

The Maine River flows to Castlemaine Harbour to the west of Castlemaine Harbour is a designated SAC and SPA. The designated sites, however are a considerable distance downstream of the project lands. I estimate that the distance, in a direct line to the closest part of the designated sites, is in the order of 29.5 kilometres to the SAC and 31 kilometres to the SPA. The qualifying interests for the SAC are

Estuaries [1130]

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

Annual vegetation of drift lines [1210]

Perennial vegetation of stony banks [1220]

Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]

Salicornia and other annuals colonising mud and sand [1310]

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

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

Embryonic shifting dunes [2110]

Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes) [2120]

Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]

Dunes with *Salix repens* ssp. *argentea* (*Salicion arenariae*) [2170]

Humid dune slacks [2190]

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

Petromyzon marinus (Sea Lamprey) [1095]

Lampetra fluviatilis (River Lamprey) [1099]

Salmo salar (Salmon) [1106]

Lutra lutra (Otter) [1355]

Petalophyllum ralfsii (Petalwort) [1395]

The special interests for which the SPA has been designated are

Red-throated Diver (*Gavia stellata*) [A001]

Cormorant (*Phalacrocorax carbo*) [A017]

Light-bellied Brent Goose (*Branta bernicla hrota*) [A046]

Wigeon (*Anas penelope*) [A050]

Mallard (*Anas platyrhynchos*) [A053]

Pintail (*Anas acuta*) [A054]

Scaup (*Aythya marila*) [A062]

Common Scoter (*Melanitta nigra*) [A065]

Oystercatcher (*Haematopus ostralegus*) [A130]

Ringed Plover (*Charadrius hiaticula*) [A137]

Sanderling (*Calidris alba*) [A144]

Bar-tailed Godwit (*Limosa lapponica*) [A157]

Redshank (*Tringa totanus*) [A162]

Greenshank (*Tringa nebularia*) [A164]

Turnstone (*Arenaria interpres*) [A169]

Chough (*Pyrrhocorax pyrrhocorax*) [A346]

Wetland and Waterbirds [A999]

The conservation objectives are generally to maintain or restore the favourable conservation condition of the habitats and species for which the sites have been designated.

The distance along the hodological connection to the designated sites is considerably longer than the direct distance referred to above. Having regard to the distance involved and to the conservation objectives for the SAC I consider that the project is not likely to have any significant effect on the Castlemaine Harbour SAC. A mature coniferous forest is not a suitable breeding or foraging habitat for the mainly coastal and wetlands birds for which the SPA has been designated. Having regard to this and to the separation distance involved the proposed tree felling and replanting is not likely to have any significant effect on the Castlemaine Harbour SPA.

I do not have detailed drawings indicating the locations of other forestry related developments in the wider area. The aerial photograph submitted, indicates some licenced tree felling in the immediate vicinity of the project lands. I have commented above on the potential impact of in-combination effects on the Hen Harrier SPA if felling is to be carried out during the breeding season. As I consider that the proposed project of itself would have no effect on any of the other Natura sites

referred to, I consider that there would not be any significant in-combination effect on any of these Natura 2000 site.

In checking myplan.ie I find few planning permissions have been granted for development in the vicinity in the past 10 years. The closest permission was for a house at the crossroads about 1.5 kilometres away to the northwest. (Case reference 19382). The next closest was for a house extension on lands over 1.5 kilometres away to the southeast. (Case reference 13417). 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. An application for a grid connection from a wind farm to the national grid which would cross the local road to the south of the project lands near where the Brown Flesk River crosses the road was refused planning permission following an appeal to An Bord Pleanála on 5/6/2015. (An Bord Pleanála case reference PL 08 244065).

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 3 conditions included, which refer specifically to the Mullaghareirk Mountains, West Limerick Hills and Eagle Mountain 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 other than the Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA. In these circumstances the carrying out of an Appropriate Assessment as referred to in Article 6(3), except in the case of the SPA referred to, is not required. In that case I consider that subject to compliance with the conditions imposed in the licence the felling and replanting would not adversely affect the integrity of the SPA site in question.

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 uses are forestry and agriculture with forestry being predominant in the upland rural area in question. 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 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 area is indicated to be an area of Secondary Special Amenity in the current Co. Kerry 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 except for the Mullaghareirk Mountains, West Limerick Hills and Eagle Mountain SPA, having regard to the reasons for designating the sites and their conservation objectives. In the case of the SPA referred to I consider that the tree felling and replanting, proposed subject to compliance with the conditions set out in the licence, would not adversely affect the integrity of the Natura site.

Padraic Thornton

18/12/ 2020

