



30 July 2020

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**Subject:** Appeal 326/19 regarding licence CN05 FL0098

Dear [REDACTED]

I refer to the 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 CN05 FL0098 was issued by the Department of Agriculture, Food and the Marine (DAFM) on 22 October 2019.

**Hearing**

A hearing of appeal 326/19 was held by the FAC on 16 July 2020.

FAC Members: Mr Des Johnson (Chairperson), Mr Jim Gallagher, Mr Pat Coman, Mr Vincent Upton

**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 grant this licence (Reference CN05-FL0098).

The proposal is for clear-felling and reforestation on a stated site area of 5ha in year 2020 at Caughoo, Co. Cavan. Soils are stated to be 29% surface water gleys and groundwater gleys and 71% lithosols and regosols. The slope is moderate.

In processing the application, the DAFM carried out a screening for Appropriate Assessment for Natura 2000 sites within a 15km radius. Three designated sites were identified, namely Lough Oughter & Associated Loughs SAC, Lough Oughter SPA and Lough Sheelin SPA. The DAFM assessment concluded that there was no possibility of significant effects on any of these sites for reasons of the absence of

hydrological pathway and the site being within a separate waterbody catchment (SAC), and the unsuitability of the project site for the species listed as qualifying interests in the SPAs.

The application was referred to Cavan County Council but there is no response on file.

The DAFM issued the Licence on 22<sup>nd</sup> October 2019. The Licence is exercisable until 31<sup>st</sup> December 2022 and is subject to standard conditions. Replanting would be 88% Norway Spruce and 12% Sitka Spruce.

There is a single appeal against the decision to grant the Licence. The grounds contend that, based on the information supplied, it is not possible to make a decision in accordance with the requirements of the Habitats and EIA Directives. No proper assessment was carried out and no assessment of cumulative effects. Reference is made to Court judgments and, in particular, *Kelly v An Bord Pleanála*.

In response to the grounds of appeal, the DAFM stated that the Appropriate assessment screening carried out accorded with the Department's procedures at the time (September 2019). There is no possibility of significant effects alone or cumulatively. Extracts from the websites of the Department of Housing, Planning and Local Government, An Bord Pleanála and the Environmental Protection Agency are submitted, together with a list of other forestry plans and projects.

The DAFM submitted a revised Appropriate Assessment screening form (sign dated 8<sup>th</sup> May 2020), and this was circulated to the parties. This identifies the same three Natura 2000 sites. The screening concludes that there is no possibility of significant effects on the SAC due to the absence of upstream hydrological connectivity and lack of pathway for the transmission of any effects, no possibility of significant effects on Lough Sheelin SPA due to separation distance and no possibility of significant effects on Lough Oughter SPA due to separation. The submission also concludes that there is no possibility of significant effects in combination with other plans and projects on any of the designated sites.

The FAC sought a report by an independent consultant in relation to this proposal and, in particular, a Stage 1 screening for Appropriate Assessment in accordance with the provisions of Article 6(3) of the Habitats Directive (92/43/EEC). The report dated 6<sup>th</sup> July 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 notes that there is no evidence that the proposed clear-fell is necessary for or connected to the management of any European site and the FAC concurs with this finding. It notes the absence of any river or stream within, adjoining or in the immediate vicinity of the site. Six Natura 2000 sites are identified within 20km of the proposed site and these are assessed. The report concludes, in summary, as follows in respect of these designated sites:

- Lough Oughter & Associated loughs SAC (4km separation)  
*No possibility for significant effects due to the absence of hydrological connection, no pathway and separation distance.*
- Lough Sheelin SPA (15km separation)



*No possibility of significant effects due to separation distance and the limited site area of proposed felling*

- Clare Island and Moneybeg Bogs SAC (19km separation)

*No possibility of significant effects due to absence of hydrological connection and separation distance*

- Lough Kinale and Derragh Lough SPA (18km separation)

*No possibility of significant effects due to separation distance and limited site area of proposed felling*

- Derragh Bog SAC (20km separation)

*No possibility of significant effects due to lack of hydrological connection and separation distance*

- Lough Oughter Complex SPA (4km separation)

*The possibility of significant effects on this site cannot be excluded due to insufficient baseline information in respect of the season and duration of clear-fell and subsequent reforestation, the degree and duration of machinery and traffic noise, traffic and transportation routes and the proximity and extent of swan feeding grounds within the vicinity of the Erne and Lough to the project location.*

The report's conclusion in regard to screening for Appropriate Assessment can be summarised as follows:

- the proposed project is unlikely to generate significant effects/impacts alone or cumulatively on any SACs that lie within a 20km radius
- information is lacking regarding the intensity and duration of impacts likely to be generated within the vicinity of Lough Oughter SPA, having regard to the sites qualifying interests and conservation objectives, and
- the proposed project cannot be screened out for the purposes of Appropriate Assessment in regard to Lough Oughter SPA

Having regard to the differing conclusions reached by the DAFM and the consultant in regard to screening for Appropriate Assessment, the FAC decided to carry out a Stage 1 screening and a copy of this together with an examination of environmental effects is contained in the public file.

Having regard to the nature and scale of the proposal and the characteristics of the receiving environment, the FAC considered that it should screen the proposal for the likelihood of significant effects on Natura 2000 sites within 15km, and three sites were identified. Having regard to the nature and scale of the proposal, the qualifying interests and conservation objectives of the Lough Oughter & Associated Loughs SAC and the absence of any hydrological connectivity, the FAC concluded that the proposed felling would not be likely to have any significant effect on this Natura 2000 site. The Lough Sheelin SPA is at 14603m separation and has no hydrological connection to the proposed site. The FAC concluded that the proposed felling and reforestation would not be likely to have any possible effect on this Natura 2000 site, having regard to the nature and scale of the proposal, the separation distance and the qualifying interests and conservation objectives for this designated site. The FAC noted that Lough Oughter SPA has two conservation objectives as detailed in the accompanying assessment. The proposed felling and reforestation site is currently mature forestry and does not contain any habitat suitable for any of the bird

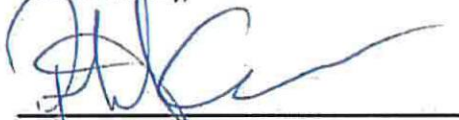
species listed as qualifying interests. It is not hydrologically connected to the SPA. The FAC considered that, in general, the main impacts arising from the operation of the proposed felling and reforestation would likely be noise, traffic and general disturbance and that these would be short-term and intermittent and would occur approximately 4km from the SPA boundary. Having regard to the nature and scale of the proposal, the absence of any habitat on the site suitable for the foraging or nesting of the qualifying interests in the SPA, the absence of hydrological connectivity and separation distance to the SPA, and to the conservation interests of the designated site, the FAC concluded that the proposed development would not be likely to have any significant impact on the Lough Oughter SPA, having regard to its conservation objectives.

Felling does not fall within a class of development to which the EIA Directive applies, and the proposed operation does not include works which, by themselves, would be of a class of development to which the EIA Directive applies. The reforestation proposed is small in scale and does not involve any change in land use

In terms of environmental impacts, the proposed site forms part of a larger forest at this location. There are other areas of maturing forestry in the wider area but not in the immediate vicinity of the proposed site. The receiving environment is characterised as a rural agricultural area with extensive one-off housing, much of which is in the form of ribbon development along public roads. The proposed development will give rise to noise, and general disturbance during operations but this will be short-term, intermittent and not significant. It is likely that there will be increased activity on local roads, but this would be limited, short-term and not significant. There will be localised visual impact due to the felling of trees and this will change over time as reforestation takes hold and matures. There would be no likelihood of significant impacts on any designated site. There is no hydrological connectivity to any watercourse or lake, and there would be no significant impact on water quality. Climate change effects would be imperceptible resulting from the felling and reforestation. Overall, the FAC concluded that the proposed felling and reforestation by itself or in combination with other plans and projects in the area, would not be likely to have significant effects on the environment.

In deciding to confirm the decision to grant the Licence the FAC concluded that the proposed clear-felling and replanting would be consistent with Government policy and Good Forestry Practice.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Pat Coman', written over a horizontal line.

Pat Coman on behalf of the Forestry Appeals Committee

APPLICATION FOR TECHNICAL APPROVAL FOR A CLEARFELL LICENCE

LAND OWNER:



DAFM FILE REF.

CN05-FL0098

TOWNLAND:

CAUHOO

COUNTY.

CAVAN

APPELLANT.





## **SCREENING FOR APPROPRIATE ASSESSMENT AND EIAR**

### **SITE LOCATION**

The project site location lies approx 4 kms (as the crow flies) S. of Cavan town in a rural agricultural landscape. The project site is adjoined at its S.E corner by a local road which runs between the N55 to the south and the R198 to the north. Access to the project site would appear to be from that local road.

The project location also lies within a Lakeland landscape in which the largest lakes are Lough Oughter less than 4 kms to the N.W and Lough Sheelin approx 15 kms to the S. W., both distances being measured as the crow flies.

The Erne River also flows northwards towards and into Lough Oughter approx 4 kms to the west and N.west of the project site.

Several blocks of afforestation lie in close proximity to the project location; the blocks vary in size; the largest of them are to be found at Drumlom (less than 2 kms to the S.E) and at Crossdoney. ( less than 3 kms to the N.W.)

Google Maps also show a degree of residential ribbon development immediately south east of the project location.

### **SITE DESCRIPTION**

The site which is stated to be 5 ha.in area forms part of a large block of afforested lands lying within a rural, agricultural landscape in Co Cavan; the southern boundary of the project site interfaces directly with rural farmland as does part of its northern boundary ; its western boundary interfaces with areas which appear to have already been clear felled. An internal forest road would appear to have facilitated that clear felling; the forest road intersects with the adjoining public road at the S.E corner of the project site.

The nature and type of the boundaries of the project site (ie drainage ditch/hedgerow/fence) cannot readily be discerned from Google maps.

The Soil Type on site is stated to be surface and groundwater gleys

### **CHARACTERISTICS OF THE PROPOSED PROJECT**

Clear felling of Sitka Spruce and reforestation by conifer species

Information regarding transport routes, access junctions, any road upgrading works, storage facilities and all associated ancillary and site development works has not been provided by the applicant

### **LICENCE**

A Licence to clearfell the proposed site was applied for in Feb 2019. A Harvest Plan incorporating a suite of general environmental and site safety rules accompanied the application as did a brief AA Pre-Screening Report.

The Licence with conditions attached issued on the 22.10. 2019. The conditions appear to be standard in nature and not site specific.

The Licence was suspended on the 13.11.2019 due to submission of an appeal.



## **APPELLANT'S SUBMISSION**

Based on the information submitted to the public it is not possible to grant a Licence which would be in compliance with the Habitats and EIA Directives having regard particularly to recent cases of the CJRU

## **APPROPRIATE ASSESSMENT SCREENING FORM**

Lough Oughter SPA

Conclusion - Screen out the project - Appropriate Assessment is not required in relation to that Natura 2000 site due to the separation distance between the Natura site and the project, and the absence of any potential for it to contribute to any cumulative adverse effects on the site.

Lough Oughter and Associated Loughs SAC

Screening Conclusion - Screen out the project- an Appropriate Assessment is not required in relation to that Natura 2000 site given the absence of a direct upstream hydrological connection and subsequent lack of any hydrological or other pathway

Lough Sheelin SPA

Screening Conclusion - Screen out the project - Appropriate Assessment is not required in relation to that Natura 2000 site due to the separation distance between the Natura site and the project, and the absence of any potential for it to contribute to any cumulative adverse effects on the site.

## **FORESTRY DIVISION STATEMENT TO FAC (5.2.2020)**

The Forestry Inspector stated that

Screening for AA focused on Natura sites within a 15km zone around the project location. Information submitted by the applicant was considered.

Having reviewed the Qualifying Interests and conservation objectives of the Natura sites, and the source-pathway-receptor model to ascertain impacts, it was deemed that the project when considered in combination 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 for the purposes of Appropriate Assessment

## **APPROPRIATE ASSESSMENT SCREENING IN RESPECT OF THE PROPOSED PROJECT AS REQUIRED UNDER ARTICLE 6 OF THE HABITATS DIRECTIVE (92/43/EEC)**

The Appropriate Assessment Screening carried out below relates to Stage 1 of the Screening Process ie.

**(A)** Is the project directly connected with or necessary to the management of a European site

**(B)** If not, is the project likely to have a significant effect individually on a European site in view of the conservation objectives of that site?

**(C)** Is the project likely to have a significant effect in combination with other plans and projects on a European site in view of the conservation objectives of that site?



Re (A) above, there is not any evidence submitted by the Licence applicant, that the proposed clear fell is necessary for, or connected to the management of any European site.

Re (B) above - Is the project likely to have a significant effect individually on a European (Natura) site in view of the conservation objectives of that site?

I have screened the following European (Natura) sites, in terms of the source/ pathway/ receptor model to determine whether the project is likely to have a significant effect(s) on those sites having regard to their Qualifying interests and Conservation Objectives. Prior to that screening I interrogated the [epa.gis.ie](http://epa.gis.ie) mapping system to determine the hydrological characteristics of the project site; **that revealed an absence of any river or stream network within , adjoining, or in the immediate vicinity of the project site** - the nearest streams run in a N/S direction some 1.4 kms to the east and also some 1.5 kms to the west of the project location, The western stream outfalls into a river network which flows into the Erne; the Erne itself flows into Lough Oughter SAC and SPA Lough Complex. The closest point of that river network to the project location is 1.5 kms to the west. The closest point of the Erne to the project location is 4 kms to the west.

In the absence of any site inspection which could potentially reveal the presence of drainage channels in and around the site perimeter I have therefore relied solely on the information contained in the [gis.epa](http://gis.epa.ie) mapping system.

In accordance with the precautionary principle, Natura 2000 sites lying outside a 20 km radius of the project location were initially considered. However as no potential for effects on those sites was identified, I have confined Screening to those Natura sites which lie within 20 kms of the project location bearing in mind that the zone of influence of Natura 2000 sites often extends far beyond their boundaries particularly in regard to SPAs. Furthermore the 20 km distance takes account of the varying dispersal and foraging ranges of bird species.

The sites which were assessed in regard to potential direct and indirect effects generated by the proposed project therefore are as follows::

#### **Lough Oughter and Associated Loughs SAC**

4 kms (to N.W)

Qualifying Interests are Eutrophic Lakes, Bog Woodland and Otter

Conservation Objectives are to maintain or restore the favourable Conservation Conditions of the Annex 1 Habitat and/or the Annex II species for which the site has been selected

I consider that there is not any potential for direct impacts on the above site as the development footprint is located entirely outside the SAC boundary.

Potential drainage related indirect effects which alter the water regime governing the Eutrophic Lakes and Bog woodland are unlikely given the absence of any hydrological connection between the project location and the Natura site. Adverse indirect effects on otter habitats eg by way of potential water pollution ( eg use of chemicals) disturbance of species, eg by way of disruption of wildlife corridors between habitats, are also unlikely given the absence of any source pathway receptor connection between the project location and the European site as well as the distances involved.

#### **Lough Oughter and Associated Loughs SPA**

4kms. (To N.W)

Qualifying Interests are: Grebe, Whooper Swan, Wigeon, Wetland and Water Birds

Conservation Objectives are



( i) to maintain or restore the favourable Conservation Conditions of the bird species listed as conservation interests for this SPA.

( ii) to maintain or restore the favourable conservation condition of the wetland habitat at Lough Oughter SPA as a resource for the regularly - occurring migratory water birds that utilise it.

Lough Oughter SPA is also a Ramsay Convention site and a Wildfowl sanctuary.

"The Lough Oughter Complex and The River Erne are among the most important sites for Whooper Swans in the county, the former being the only internationally important site in the county... The swans are dispersed widely in the area and move in response to changes in food availability and flood conditions. Favoured sites along the Erne River and its floodplain are concentrated in the stretch between Lough Oughter and Lough Gowna" (Whooper Swan population in Ireland 1960-2000: Waterbirds Review Series by Joint Nature Conservation Committee)

Given the importance of the Lough Oughter SPA complex for the Whooper Swan it is essential to assess the potential indirect effects of the proposed project on their feeding grounds there.- those effects will likely vary according to the season and duration of the proposed clear fell and subsequent reforestation, the degree and duration of machinery and traffic noise, traffic and transportation routes to and from the project site, and the proximity and extent of the swan feeding grounds within the vicinity of the Erne and the Lough to the project location. As neither that baseline information nor best scientific evidence is available in regards the above, I am unable to conclude that significant effects on Lough Oughter SPA would not arise, particularly having regard to the proximity of the project site to Lough Oughter and the Erne River.

Similarly the Site Synopsis for Lough Oughter states that "it is the centre of the Irish breeding range of Great Crested Grebe" and "that the Complex is of importance for a range of wintering wildfowl"

However as with the Whooper Swans, neither baseline information nor best scientific knowledge in the field has been presented with the application to identify what effects, either direct or indirect, the proposed project would have on the qualifying interests of Lough Oughter SPA viz, the Great Crested Grebe and wintering wildfowl. In the absence of that information, and given the proximity of the project location to the SPA, I am unable to conclude that significant effects on Lough Oughter SPA will not occur. I therefore consider that the project cannot be screened out for the purposes of Appropriate Assessment.

### **Lough Sheelin SPA**

15 kms. (To S)

Qualifying Interests are Great Crested Grebe, Pochard, Tufted Duck Goldeneye, Wetland and Water Birds

Conservation Objectives are

( i) to maintain or restore the favourable Conservation Conditions of the (1st 4) bird species above which are listed as conservation interests for this SPA.

( ii) to maintain or restore the favourable conservation condition of the wetland habitat at Lough Sheelin SPA as a resource for the regularly - occurring migratory water birds that utilise it.

The Site Synopsis states that it is a nationally important site for four species of wintering wildfowl.

Again as with Lough Oughter SPA, documentation submitted with the licence application fails to provide even baseline information let alone best scientific knowledge to identify potential direct/indirect effects on the SPA which may arise as a result of the proposed project. However unlike Lough Oughter, the project location lies at a considerable distance from Lough Sheelin - given that, and also the limited site area area, direct and indirect



effects are unlikely to be significant; I consider therefore that the project site can be screened out for Appropriate Assessment in regard to the above SPA.

**Clare Island and Moneybeg Bogs SAC.**

19kms. (To S.)

Qualifying Interests are Active and Degraded Raised Bogs and Rhynchosporion  
Conservation Objectives are to restore the favourable conservation condition of the above Bogs as defined by a list of attributes and targets

I consider that there is not any potential for direct impacts on the above site as the development footprint is located entirely outside the SAC boundary.  
Potential drainage related indirect effects which alter the water regime within the Raised Bogs are unlikely given the absence of any hydrological connection between the project location and the Natura site. Other non drainage related indirect effects eg introduction of invasive species into the Bogs are also unlikely given the separation distance between the project location and the Natura site as well as the likely absence of non hydrological interactions between the project site and the SAC  
I consider therefore that the project site can be screened out for Appropriate Assessment in respect of the above SAC

**Lough Kinale and Derragh Lough SPA**

18kms. (To S.)

Qualifying Interests are Pochard, Tufted Duck, Wetland and Water Birds  
Conservation Objectives are to maintain or restore the favourable Conservation Conditions of the bird species above which are listed as conservation interests for this SPA.  
The site supports nationally important populations of Pochard and Tufted Duck.

Having regard to the area of the proposed project site, and its separation distance from the above SPA, I conclude that the proposed project is unlikely to have significant direct or indirect effects on the above SPA. It can therefore I consider be screened out for Appropriate Assessment in respect of the above SAC

**Derragh Bog SAC.**

20 kms (to S.)

Qualifying Interests are: Degraded Raised Bogs still capable of natural regeneration and Bog Woodland  
Conservation Objectives are to maintain or restore the favourable Conservation Conditions of the Annex 1 Habitat(s) and/or the Annex II species for which the site has been selected

I consider that there is not any potential for direct impacts on the above site as the development footprint is located entirely outside and distant from the SAC boundary.  
Potential drainage related indirect effects which alter the water regime governing the Raised Bogs and Bog woodland are also unlikely given the absence of any hydrological connection between the project location and the Natura site. Other non drainage related indirect effects eg introduction of invasive species into the Bogs and Bog Woodland are unlikely given the separation distance between the project location and the Natura site. I consider therefore that the proposed project can be screened out for Appropriate Assessment in respect of the above SAC.

**Re (C) above - Cumulative Impacts**



The Screening process here identifies the potential likely significant effects (direct and indirect) of the project in combination with other plans and projects on the European site within the context of the site's conservation objectives in light of best scientific knowledge in the field

I have assessed the proposed project therefore in conjunction with:

**Cavan Co. Dev Plan 2014-2020**

**Planning applications (submitted within the last 5 years)**

**Appeals to ABP**

**Forestry Projects**

### **Cavan Co. Dev Plan policies and objectives**

Chapter 8.4.1 of the Plan identifies the Natura 2000 sites in the County requiring that development in or near them "should avoid any significant adverse impacts on the features for which the sites have been designated or proposed for designation".

Chapter 4 of the Plan identifies Roads, Water, and Wastewater proposals and objectives for the County; none of those are proposed in the vicinity of the project location and even where proposed at alternative locations are unlikely, in conjunction with the proposed project, to result in any direct/indirect cumulative effects on any of the Natura sites listed above.

Generally therefore the Co Development Plan, at a strategic level, discourages development which would either individually or cumulatively result in significant direct/indirect adverse impacts on Natura 2000 sites

### **Planning applications (submitted within the last 5 years)**

The majority of the above which took place within the vicinity of the project site were associated with minor residential developments (eg single dwelling house, extensions and change of use); the modest scale of those developments is such that they are unlikely even in conjunction with the proposed project, to have any significant direct/indirect effects on the above Natura 2000 sites,

Furthermore even where large scale development has occurred in the vicinity of the project, no significant residual cumulative effects have been identified in regard to the Qualifying/Special Conservation interest for any of the Natura sites

In conclusion none of the listed applications for the last 5 years, in conjunction with the project currently proposed, are likely to have significant cumulative direct/indirect effects on the Qualifying Interests/Conservation Interests of the above Natura sites.

### **Appeals to ABP**

Appeals to ABP within the general vicinity of the proposed project are few and are unlikely, in conjunction with the proposed project, to generate any significant direct/indirect effects on the above Natura 2000 sites.

### **Conclusion regarding Cumulative Impacts**

Having regard to likely residual effects from other plans and projects in the area, in conjunction with likely effects from the proposed project, I am unable to identify any



significant cumulative, direct/indirect effects in regard to any of the Qualifying/Special Conservation Interests for the above Natura sites other than for Lough Oughter SAC .

### **Forestry Projects**

I have examined the Schedule of forestry projects contained within the documentation on file ; the Schedule was put together by DAFM, -not by the applicant - and identified private and Coillte owned forest projects which have been implemented or licensed for implementation between 2015 and 2020.

Documentation accompanying that Schedule however merely noted that "the project is in line with the Forestry Programme 2014-2020 and in accordance with E.U Guidelines for State aid for agriculture and forestry in rural areas 2014-2020".

Application documentation failed to not only identify potentially significant direct and indirect effects of the proposed forestry project on the Natura sites but also to identify and assess any cumulative effects which might potentially occur. I refer particularly to the loss of semi natural grasslands which can occur due to the ongoing cycle of afforestation of clear felling and reforestation; that loss may potentially impact on the feeding patterns of Waterbirds including Waders which may frequent Lough Oughter SPA.

In the absence therefore of clarity regarding ongoing the cumulative extent of semi natural grassland loss and the absence of any additional expert and best scientific advice on the matter, I am unable to conclude that significant cumulative effects on Lough Oughter SPA will not occur. I therefore consider that the project cannot be screened out in that regard for the purposes of Appropriate Assessment.

### **CONCLUSION IN REGARD TO SCREENING FOR APPROPRIATE ASSESSMENT**

In carrying out Screening for Appropriate Assessment I have had regard to information contained on file, particularly inter alia, in the

- Forestry Inspector's AA Screening Form of Jan 2020 where he concluded that the project should be screened out for the purposes of Appropriate Assessment
- The Forestry Division Statement to the F.A.C which recommended that the project be screened out for the purposes of Appropriate Assessment on the basis that the project does not give rise to a significant effect on any Natura site
- The Tree Felling Licence where I interrogated the terms of the Licence for potential mitigation conditions.

I consider that interrogation of the above documents and certain others contained on file is required by way of the European Communities Birds and Habitats Regulations 2011, S.I. 477, Part V, Art.47.21.

I have concluded in regard to Stage 1 Screening for Appropriate Assessment that the proposed project is unlikely to generate significant effects/impacts either on an individual basis and/or cumulatively in conjunction with other plans and projects in regard to those SACs which lie within a 20 km radius of the project location. In that respect therefore the proposed project can be screened out for Appropriate Assessment  
**HOWEVER**

I have also concluded that there is a lack of clarity and an absence of best scientific information on file regarding the intensity and duration of impacts likely to be generated within and in the vicinity of Lough Oughter SPA by the proposed project, having regard to the Qualifying Interests and associated Conservation Objectives of that SPA. I refer particularly to



- noise emissions from the site, associated with machinery , heavy vehicular movements, engine idling and vehicle turning manoeuvres,
  - Noise emissions associated with heavy traffic movements along haulage routes, which pass close to the SAC
  - The duration and the season(s) within which those impacts are likely to occur,
  - The extent and geographical spread of feeding grounds and nesting sites associated with the Whooper Swan and Crested Grebe - identified as an integral part of the Qualifying Interests for Lough Oughter and associated Loughs SPA.
  - The cumulative loss of semi natural grassland in the vicinity of Lough Oughter SPA due to what would appear to be an ongoing expansion of afforested lands, and a continuous rolling programme on those lands of planting, clear felling and reforestation.
- Having regard to the absence of expert and best scientific information on the bullet points above and in the absence of a NIS which could potentially bring clarity to those points, I am not satisfied that the proposed project either individually, or cumulatively in association with other plans and projects, would not be likely to have significant effects on the European site of Lough Oughter and Associated Loughs SPA . I conclude therefore that the proposed project cannot be screened out for the purposes of Appropriate Assessment in regard to Lough Oughter SPA.

## **EIA PRELIMINARY EXAMINATION/SCREENING**

In the current case a licence has been applied for clear felling an area of 5 ha and subsequent reforestation of that area.

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 deforestation for the purposes of conversion to another landuse. In the current case it is proposed that felling will be followed by reforestation .

I consider therefore that an EIA Preliminary Examination is not required in the current case having regard to

the projects described at Annex II Para 1(d) of the Directive and

The modest scale of the proposed project

The likely short duration of the proposed felling and reforestation schedule

The absence of any hydrological connection between the project and the surrounding environment , in particular the Natura 2000 sites which lie in close proximity to the project location.

**Conclusion;**

As the proposed project falls outside the description of EIS projects listed at Annex II of the Directive , and as the project is unlikely to have significant effects on the environment, an EIAR is not required.

Mary Cunneen

6.7.2020



***Proposal and location***

The proposal is for clearfelling on a stated site area of 5ha in year 2020 at Caughoo, Co. Cavan. Soils are stated to be 29% surface water gleys and groundwater gleys and 71% lithosols and regosols. The slope is moderate. The site is in a rural, agricultural area but with extensive development of one-off housing. It borders a public road to the east and is part of a larger area of maturing forestry. Part of the adjoining forest appears to have been felled in the past. Agricultural fields in the wider area are generally small and enclosed. There are no streams or rivers evident on the site or identified by the EPA or OSI. The nearest waterways are the Kevit Lower approximately 1.15km to the west and the Lisduff approximately 1.4km to the east.

***Appropriate Assessment Screening***

The FAC concluded that the proposed felling would not be directly connected with, or necessary to the management of any Natura 2000 site.

Having regard to the nature and limited scale of the proposal and the characteristics of the receiving environment, the FAC considered that all Natura 2000 sites within a 15km radius should be included in a screening for Appropriate Assessment and that it could be concluded that there would be no likelihood of significant effects on designated sites outside of this radius. There are 3 Natura 2000 sites within 15km radius and these, together with their separation distances and qualifying interests are as follows:

**Lough Oughter & Associated Loughs SAC<sup>1</sup>      (4127m)**

- Natural eutrophic lakes with Magnopotamion or Hydrocharition type vegetation
- Bog woodland
- Otter

**Lough Sheelin SPA<sup>2</sup>      (14603m)**

- Goldeneye
- Tufted Duck
- Pochard
- Great Crested Grebe
- Wetlands

**Lough Oughter Complex SPA<sup>3</sup>      (4024m)**

- Wigeon
- Whooper Swan

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<sup>1</sup> Conservation objective – “to maintain or restore the favourable conservation condition of the Annex I habitat and/or the Annex II species for which the SAC has been designated”.

<sup>2</sup> Conservation objective – “To maintain or restore the favourable conservation condition of the bird species as Special Conservation interests for this SPA”.

<sup>3</sup> Conservation objectives included in main text.



- Great Crested Grebe
- Wetlands

There are no rivers or streams on the project site. The nearest streams are Kevit Lower approximately 1.15km to the west and the Lisduff approximately 1.4km to the east. There is no hydrological connection between the proposed site and either of these waterways. There is a public road, extensive ribbon development and enclosed agricultural fields between the proposed site and the Lisduff. There is also a small lake (with no obvious input or outfall approximately 1.2km to the east south east of the proposed site and there is no hydrological connection from the proposed site to this lake. Having regard to the nature and scale of the proposal, the qualifying interests and conservation objectives of the Lough Oughter & Associated Loughs SAC and the absence of any hydrological connectivity, the FAC concluded that the proposed felling would not be likely to have any significant effect on this Natura 2000 site. The Lough Sheelin SPA is at 14603m separation and has no hydrological connection to the proposed site. The FAC concluded that the proposed felling would not be likely to have any possible effect on this Natura 2000 site, having regard to the nature and scale of the proposal, the separation distance and the qualifying interests and conservation objectives for this designated site. Lough Oughter SPA has two conservation objectives namely "to maintain or restore the favourable conservation condition of the bird species listed as special conservation interests for this SPA" and "to maintain or restore the favourable conservation condition of the wetland habitat at Lough Oughter Complex SPA as a resource for the regularly occurring migratory birds that use it". The proposed site is mature forestry and does not contain any habitat suitable for any of the bird species listed. It is not hydrologically connected to the SPA. The nearest stream to the western side of the site, at approximately 1.2km, is the Kevit Lower. This links to the Ballinagh which, in turn, merges with the Erne and the Erne flows into the SPA. The direct separation distances from the project site to the Ballinagh is approximately 1.4km and to the Erne approximately 3.9km. The Lough Oughter Complex SPA is approximately 4km separated from the proposed site in direct line. Hydrologically, the upper reaches of the Kevit Lower is approximately 5100m upstream of the SPA. The proposed site is section of a larger forest area, part of which appears to have been previously felled. The lands between the proposed site and the Kevit Lower, the Erne and the Lough Oughter SPA are in predominantly agricultural use in the form of enclosed fields of varying sizes. The FAC considered that, in general, the main impacts arising from the operation of the proposed felling and reforestation would likely be noise, traffic and general disturbance and that these would be short-term and intermittent and occur approximately 4km from the SPA boundary. Having regard to the nature and scale of the proposal, the absence of any habitat on the site suitable for the foraging or nesting of the qualifying interests in the SPA, the absence of hydrological connectivity and separation distance to the SPA, and to the conservation interests of the designated site, the FAC concluded that the proposed development would not be likely to have any significant impact on the Lough Oughter SPA, having regard to its conservation objectives.



The FAC considered the conditions attached to the Licence and concluded that none of the conditions require measures designed to avoid or reduce effects on any Natura 2000 site.

This area is predominantly rural and agricultural in character but with extensive development of one-off housing. While agricultural fields are small, enclosed and irregularly shaped, there are a number of the large farm developments in the wider area. There are other small areas of forestry in the wider area but, other than the forestry immediately adjoining, these are removed from the proposal site. Recent planning applications include new house builds and retention of telecommunications masts. Having regard to the characteristics of the surrounding area, including the immediately adjoining forestry, the FAC concluded that the proposed felling and reforestation, in-combination with other projects or land uses in the area, would not give rise to the possibility of significant effects on any Natura 2000 site.

### ***Examination of environmental impacts***

Felling does not fall within a class of development to which the EIA Directive applies and the proposed operation does not include works which, by themselves, would be of a class of development to which the EIA Directive applies. As such, there is no requirement for an examination of the proposal in the context of the provisions of the EIA Directive.

In terms of environmental impacts, the proposed site forms part of a larger forest at this location which is managed for timber production. There are other areas of maturing forestry in the wider area but not in the immediate vicinity of the proposed site. The receiving environment is characterised as a rural agricultural area with extensive one-off housing, much of which is in the form of ribbon development along public roads. The proposed development will give rise to noise and general disturbance during operations but this will be short-term, intermittent and not significant. It is likely that there will be increased activity on local roads but this would be short-term and not significant. There will be localised visual impact due to the felling of trees and this will change over time as reforestation takes hold and matures. There would be no likelihood of significant impacts on any designated site. There is no hydrological connectivity to any watercourse or lake, and there would be no significant impact on water quality. Climate change effects would be imperceptible resulting from the proposed felling and reforestation. Overall, the FAC concluded that the proposed felling and reforestation by itself, or in combination with other plans and projects in the area, would not be likely to have significant effects on the environment.

Des Johnson

On behalf of the Forestry Appeals Committee

22<sup>nd</sup> July 2020.

