



An Coiste um Achomhairc  
Foraoiseachta

Forestry Appeals Committee

12 June 2020

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Our ref: FAC 303/2019  
Subject: Appeal in relation to forest road licence CN84482

Dear [REDACTED]

I refer to the appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine in respect of forest road licence CN84482.

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

Forest Road licence CN84482 was granted by the Department on 10 October 2019.

#### Hearing

A hearing of appeal 303/2019 was conducted by the FAC on 27 May 2020.

**FAC Members:** Mr Des Johnson (Chairperson), Mr Vincent Upton and Mr Pat Coman

#### Decision

Having considered all of the information before it, including a consultant's report, the FAC has decided to confirm the decision of the Minister to issue licence CN84482 for the reasons set out below:

The proposal is 180m of forest road at Carrick Lower, Co Donegal, located within the Donegal Bay North Catchment, a harvesting road to service 8.3ha, runs west to east with a dogleg to north and a small 't' to north-west. Elevations are 90m to 100m on a relatively steep sloped southern side of Crockunna, with well drained mineral soil type. Construction is to excavate to hard build on top with base material used broken rock and surface material crushed broken rock and culverts to be employed as required.

There was referral by DAFM to Northern Region Fisheries Board with reply to abide by existing guidelines, and to Donegal County Council with reply indicating no adverse impact on scenic amenities and highlighting archaeological matters.

***Licence conditions; Adhere strictly to Forest Service Archaeologist's report attached., Adhere to forestry & water quality guidelines, All guidelines to apply,***

The FAC does not consider any of these licence conditions to be mitigation measures for this proposal in respect of any European site.

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There is one appeal before the committee and the grounds include that based on the information supplied it was not possible to make a decision which was in compliance with the requirements of the Habitats and EIA directives, and having regard to the following European Court of Justice Rulings; C-258/11, C-164/17, C-323/17 and C-461/17. The test for Appropriate Assessment Screening in Irish law is as set out by "Finlay Geoghegan J. in; Kelly -v- An Bord Pleanala [2014] IEHC 400 (25 July 2014) *"There is no need to establish such an effect; it is, as Ireland observes, merely necessary to determine that there may be such an effect."*

In response to the appeal the Department of Agriculture Food and the Marine (DAFM), submitted it carried out an Assessment as per the criteria and all were fully adhered to. The FAC noted the screening for appropriate assessment included no screening for in-combination effects.

The FAC undertook an appropriate assessment screening in accordance with the provisions of Article 6(3) of the Habitats Directive (92/43/EEC). The screening report is available on the public file. A consultant's report sought and received by the FAC, dated 24 May 2020, was also considered by the FAC in coming to its decision and a copy of the report is also contained on the public file.

There are seven European Sites within a 15 km radius of the proposal; Inisduff SPA at c. 9km, Rathlin O'Birne Island SPA at c. 11km, Rathlin O'Birne Island SAC at c. 11km, St John's Point SAC at c. 15 km, Slieve League SAC at c. 1km, West Donegal Coast SPA at c. 3 km, and Slieve Tooley /Tormore Island/Loughros Beg Bay SAC at c. 7.5 km.

Due to the offshore nature of the Island Natura sites and the location, scale and nature of the proposal, the FAC is satisfied no likelihood of a significant effect arises for those European sites. With a complete absence of connectivity to St John's Point SAC and the conservation objectives to maintain/restore the favorable conservation condition of the Qualifying Interests as defined by a list of attributes and targets there is also no likelihood of a significant effect.

A stream flows south from the mountain through the forestry to be serviced and goes underneath the public road and on to the Owenwee River at c. 280m, which in turn joins the Glen River at c. 1 km before going to the sea at a point where it meets the Slieve League SAC, to which there is thus a hydrological connection. The qualifying interests and conservation objectives for Slieve League SAC are of a nature and type that even with a hydrological connection to the offshore area there is no likelihood of any significant effect on the SAC interests arising.

Again with West Donegal Coast SPA the species of interest Fulmar, Cormorant, Herring, Gull, Peregrine, Chough, Razorbill, Kittiwake and Shag would be unlikely to be impacted by the proposal considering the topography, distance, and smaller scale and nature of the proposal locating at and within existing forestry and no likelihood of a significant effect arises.

The location and slopes identified cause the proposal to be very local to Carrick Lower TD and the lower seaward areas. Other than this proposal and the area to be serviced, there is little or no forestry related activity in the environs due in no small part to the unenclosed and exposed lands in the area. There is a village settlement south and east of the proposal. Per EPA a primary effluent





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emission point is located between the village and the sea on the Glen River above the point where the Owenwee joins. There is also a storm water overflow above the emission point. There has been a lot of residential one-off housing projects in the vicinity and the construction of a whiskey distillery with visitor centre and associated offices, laboratory & ancillary facilities below the proposal (permission 2016) for which an appropriate assessment screening was undertaken and produced a conclusion of 'no potential significant effect' on any of the Natura sites and included an in-combination screening.

Having regard to Article 6(3) of the Habitats Directive (92/43/EEC), the FAC is satisfied the proposal on its own or in combination with other plans and projects does not give rise to any likelihood of a significant effect on a European site, and the need for an appropriate assessment does not arise.

The FAC undertook a preliminary examination of the proposal having regard to the EU Directive (Directive 2011/92/EU as amended by Directive 2014/52/EU) and to Schedule III of the Forestry Regulations (191 of 2017) as a sub-threshold development. Donegal County Council submitted to DAFM that the proposed site is located within a larger area of commercial conifer plantation and the wider surrounding area, which rises to the rear, is characterised by elevated heath with sparse vegetation leading to mountain landscape. Also, the site is located within an area of 'High Scenic Amenity' as defined within the County Development Plan 2018-2024. There are no defined 'Views and Prospects', directed towards the site, as defined within the County Development Plan 2018 — 2024. It is considered that there will not be an adverse impact upon scenic amenities at or beyond the site. In addition, forestry activity in the environs is quite small scale as evidenced by 1.77% forest cover within 5km radius and that percentage being the same 5 years ago.

Based on the evidence before it, including the consultants' report, and having regard to the nature, scale and location of the proposal, the FAC concluded that significant effects on the environment are not likely to be generated either individually or on a cumulative basis by the proposed project, and that formal screening or an EIAR is therefore unnecessary in the current case

The FAC concluded that the proposal is in line with Government policy and good forestry practice.

Yours sincerely,

Pat Coman, on behalf of the Forestry Appeals Committee

*Note: The confirmation by the FAC should not be interpreted as meeting any requirement to obtain planning permission under planning legislation in circumstances where the provisions of that legislation require permission to be obtained. If you are in any doubt as to whether planning permission is required, it is recommended that you contact the relevant planning authority for clarification.*



## Screening and pre-liminary EIA examination (303 19) for CN84482

### Appropriate Assessment Screening

#### Background

180m of forest road at Carrick Lower, Co Donegal, located within the Donegal Bay North Catchment, a harvesting road to service 8.3ha, runs west to east with a dogleg to north and a small 't' to north-west off that. Elevations 90m to 100m on relatively steep slope side of Crockunna, with well drained mineral soil type. Construction is to excavate to hard build on top with base material used broken rock and surface material crushed broken rock and culverts to be employed as required.

There was referral by DAFM to Northern Region Fisheries Board with reply to abide by existing guidelines, and to Donegal County Council with reply indicating no adverse impact on scenic amenities and highlighting archaeological matters.

**Licence conditions;** *Adhere strictly to Forest Service Archaeologist's report attached., Adhere to forestry & water quality guidelines, All guidelines to apply,*

None of these conditions are considered mitigation measures for this proposal in respect of any European site.

#### European sites

There are seven European Sites within a 15 km radius of the proposal;

Code	Site Name	Distance to (m)	Qualifying Interests
000189	Slieve League SAC	1087.35	<b>Habitats;</b> Reefs / Vegetated sea cliffs of the Atlantic and Baltic coasts / Northern Atlantic wet heaths with <i>Erica tetralix</i> / European dry heaths / Alpine and Boreal heaths / Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels / Blanket bogs / Siliceous scree of the montane to snow levels Calcareous rocky slopes with chasmophytic vegetation / Siliceous rocky slopes with chasmophytic vegetation
000190	Slieve Tooley/Tormore Island/Loughros Beg Bay SAC	6661.16	<b>Habitats;</b> Vegetated sea cliffs of the Atlantic and Baltic coasts / Embryonic shifting dunes / Shifting dunes along the shoreline with <i>Ammophila arenaria</i> / Fixed coastal dunes with herbaceous vegetation / Decalcified fixed dunes with <i>Empetrum nigrum</i> / Atlantic decalcified fixed dunes / Alpine and Boreal heaths / Blanket bogs  <b>Species;</b> Narrow-mouthed Whorl Snail / Grey Seal / Otter



Code	Site Name	Distance to (m)	Qualifying Interests
000181	Rathlin O'Birne Island SAC	8322.80	<b>Habitats; Reefs</b>
000191	St. John's Point SAC	13209.89	<b>Habitats; Large shallow inlets and bays / Reefs / Vegetated sea cliffs of the Atlantic and Baltic coasts / Semi-natural dry grasslands and scrubland facies on calcareous substrates / Molinia meadows on calcareous, peaty or clayey-silt-laden soils / Alkaline fens / Limestone pavements / Submerged or partially submerged sea caves</b> <b>Species; Marsh Fritillary</b>
004150	West Donegal Coast SPA	2733.44	<b>Birds; Fulmar / Cormorant / Herring Gull / Peregrine / Chough / Razorbill / Kittiwake / Shag</b>
004115	Inishduff SPA	9118.24	<b>Birds; Shag</b>
004120	Rathlin O'Birne Island SPA	11004.41	<b>Birds; Barnacle Goose</b>

Due to the offshore nature of the Island Natura sites and the location, scale and nature of the proposal, the FAC is satisfied no likelihood of a significant effect arises for those European sites. With a complete absence of connectivity to St John's Point SAC and the conservation objectives to maintain/restore the favorable conservation condition of the Qualifying Interests as defined by a list of attributes and targets there is also no likelihood of a significant effect.

A stream flows south from the mountain through the forestry to be serviced and goes underneath the public road and onto to the Owenwee River at c. 280m. The Owenwee River joins the Glen River at c. 1 km before going to the sea at a point where it meets the Slieve League SAC. Slieve League SAC therefore has a hydrological connection with the proposal. The conservation objectives for Slieve League SAC comprise Conservation Objectives within the SAC to maintain the favourable conservation condition of Reefs, of Vegetated sea cliffs of the Atlantic and Baltic coasts, of Northern Atlantic wet heaths with *Erica tetralix*, of Alpine and Boreal, of Blanket bogs, of Calcareous rocky slopes with chasmophytic vegetation, and of Siliceous rocky slopes with chasmophytic. The qualifying interests and conservation objectives for Slieve League SAC are of a nature and type that even with a hydrological connection to the offshore area there is no likelihood of any significant effect on the SAC interests arising.

Again with West Donegal Coast SPA the species of interest Fulmar, Cormorant, Herring, Gull, Peregrine, Chough, Razorbill, Kittiwake and Shag would be unlikely to be impacted by the proposal considering the topography, distance, and smaller scale and nature of the proposal locating at and within existing forestry and no likelihood of a significant effect arises.

### ***In combination***

While no plans or projects are identified by DAFM, the location and slopes identified cause the proposal to be very local to Carrick Lower TD and the lower seaward areas. There is little or no forestry related activity in the environs due in no small part to the unenclosed and exposed lands in the area. There is a village settlement south and east of the proposal. Per EPA a primary effluent emission point (TPEFF0600A0367SW001) is located between the village and the sea on the Glen R. above the point where the river to which the stream on the proposal site joins. There is also a storm water overflow above the emission point. There has been a lot of residential one-off housing projects in the vicinity and the construction of a new whiskey distillery with visitor centre and associated offices, laboratory & ancillary facilities below the proposal (permission 2016) for which an appropriate assessment screening was undertaken and produced 'no potential significant effect' on any of the Natura sites and included an in-combination screening.

### ***Conclusion***

The FAC is satisfied 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.

### ***Preliminary Examination for EIA***

EU Directive (Directive 2011/92/EU as amended by Directive 2014/52/EU) applies. The Irish Regulations in relation to forestry licence applications require the compliance with the EIA process for applications relating to 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 proposal is about 1 km beyond the periphery of a more densely populated village area but set away by the contours. The proposal being above the public road will be partially visible in the environs. However, in response to the referral by DAFM, Donegal County Council submitted that the proposed site is located within a larger area of commercial conifer plantation and the wider surrounding area, which rises to the rear, is characterised by elevated heath with sparse vegetation leading to mountain landscape. Also, the site is located within an area of 'High Scenic Amenity' as defined within the County Development Plan 2018-2024. There are no defined 'Views and Prospects', directed towards the site, as defined within the County Development Plan 2018 —2024. It is considered that there will not be an adverse impact upon scenic amenities at or beyond the site. In addition, forestry activity in the environs is quite small scale as evidenced by 1.77% forest cover within 5km radius and that percentage being the same 5 years ago.

Based on the evidence before it, including a consultant's report, the FAC, following preliminary examination for EIA, concluded that the proposed project would not be likely to give rise to significant effects on the environment on its own or cumulatively with other projects/plans, and the possibility of significant effects on the environment can be ruled out and an EIAR is not required.

Pat Coman, on behalf of the FAC, 04 June 2020





[REDACTED]

[REDACTED]

CONTRACT NO. : CN 84482

TOWN LAND. : CARRICK LOWER

COUNTY. : DONEGAL

[REDACTED]

:

[REDACTED]

[REDACTED]

:

[REDACTED]

## 1. PROPOSAL

### Forest Road

Length: 180m comprising 30m of new road and 150m upgrade  
Carriageway width: 3.4 m.  
Tree clearance 15 m adjacent to the road margins  
Entrance works: Neither new nor widening of existing entrance proposed

### Construction Method

Excavate to weathered rock  
Fill with broken rock  
Surface with crushed graded rock (804?)  
Provide culvert as required

### Planning Permission

The applicant has not provided any information in this regard

### Forest Area serviced

8.3 ha

### Plantation Age

Unknown

## 2. SITE DETAILS

### Existing land use

Afforestation

### Soil Type

Mineral.

### Elevation

100.0 - 150.0 O.D.

### Geology

Unknown

### Boundaries and adjoining Landuses

Mountain slopes, scrubland and road frontage vegetation; slight road frontage development

### Aquatic Zones

A small stream flows southwards from the mountain to the rear of Carrick House through the forested lands to be serviced by the proposed road; the stream follows the alignment of the access to Carrick House as far as the R263; it then flows under the R263 and

outfalls into the Owenwee River. A distance of approx 280m occurs between the southern site boundary adjacent to the public road and its outfall into the Owenwee.

From that outfall the Owenwee flows south eastwards for a distance of approx 1 km at which point it forms a confluence with the Glen River before flowing into a sea inlet. The inlet is approx 2.75 m in length and at its mouth on its eastern shore it is adjoined by Slieve League SAC and Donegal Coast SPA

Slieve League SAC is the only Natura 2000 site out of the 7 described below which has a hydrological connection with the project location

### **3. SURROUNDING ENVIRONMENT**

The project location is accessed from the R263 which runs between Kilcar to the S.E and Glencolumcille to the N.W in west Donegal.

The project location lies approx 1.5 kms west of the village of Carrick, to the side and rear of Carrick Lodge- a mid 19C regional country house. The proposed access road incorporates the existing access to Carrick Lodge and a newly constructed stretch which runs eastwards from the terminus of the Lodge access to the afforested lands which it will service.

The afforestation which the proposed road will service is bounded by bare mountain to the east, north and north west. Its southern and south eastern boundaries interface with the grounds and access to Carrick Lodge respectively.

The S.E tip of the afforestation adjoins the gatehouse of Carrick Lodge; the gatehouse fronts the R263.

### **4. REFERRAL RESPONSES**

28.8.2019 Inland Fisheries request applicant to comply strictly with Forestry and water Quality Guidelines, forest Harvesting and Environment Guidelines, Code of Best Forest Practice, and relevant COFORD Guidelines

20.9.2019 Donegal Co. Co. Planning Authority; no objection.

25.9.2019 Forest Service Archaeologist requires compliance with a number of conditions including provision of exclusion zones of minimum width 30m.

### **5. INSPECTOR CERTIFICATION - PRE - APPROVAL (6.11.2019)**

This was based on a field and desk Inspection

The Certification screened the proposed project for both EIA and Appropriate Assessment and stated that

- The area is sensitive for fisheries
- The area contains a listed archaeological site/monument
- The project location lies 15km or less from a number of Natura 2000 sites (SAC and SPA)



- The cumulative effects/impacts of the project in regard to forest cover and forest road network are not likely to be significant, for the purposes of E.I.A and recommends that the project not be subject to the EIA process
- The project is recommended to be screened out for the purposes of Appropriate Assessment based on an examination of the Qualifying Interests for each of the Natura 2000 sites and the fact that having regard to a number of considerations esp absence of connectivity between the project and the Natura sites, there was no possibility that the project would have a significant effect on the Natura site.
- The Certification then recommended Licence Approval

## 6. AA SCREENING CONCLUSION.

An AA Screening Conclusion was arrived at for each of the Natura 2000 sites listed. The conclusion drawn was that as "there was no possibility that the project either alone or in combination with other plans and projects would have a significant effect on any of the Natura sites, that the project could be screened out for the purposes of A.A"

Furthermore -

"The project area is greater than 3 km from any Natura site and does not overlap any FPM safeguards within the project or any conditions attached to any approval issued are unrelated to the protection of any Natura site.

*I therefore screen out this project for the purposes of Appropriate Assessment ie. Appropriate Assessment is not required "*

## 7. APPELLANT'S SUBMISSION. ( Rec'd 23.4.2019 and 10.07.2019)

1. The test for A.A. Screening as set out in Kelly v ABP 2014 IEHC 400 where it was stated that

*The possibility of there being a significant effect on the site will generate the need for Appropriate Assessment for the purposes of Art. 6 (3)...It is not necessary to establish such an effect; it is...merely necessary to determine that there may be such an effect*

2. The application must be screened for A.A in accordance with the law and judgements of the CJRU set out in Cases C-258/11, C-164/17, C- 323/17 and C- 461/17

## 8. LICENCE DETAILS

Licence approved on 10.10.2019

Conditions attached for Grant purposes are:

Completion date of road works by 7.10.2022

Compliance with specified Operational Proposals and Specifications

Compliance with Dept. Guidelines and requirements for Landscape, Water Quality, Harvesting, Biodiversity and Archaeology

Compliance with Environmental and Silvicultural Conditions

Tree felling to be carried out only within the road reserve.

Compliance with a set of comprehensive archaeological guidelines

## Appendix A

All Departmental Environmental and Silvicultural Guidelines to apply including a number of specific conditions relating to Forestry and water quality guidelines and in particular archaeological guidelines

### 9. DAFM (FOREST DIVISION) STATEMENT TO FAC. (9.12.19)

The statement noted that the Assessment had been carried out in accordance with certain Criteria which had all been fully adhered to.

### 10. NATURA 2000 SITES

#### Inisduff SPA

This SPA is a small island lying approx 9 kms S.E of the project location

Its Qualifying Interest is the shag which is almost exclusively a coastal bird.

The conservation objective is to maintain/restore the favourable conservation condition of the bird

#### Rathlin O'Brien Island SPA

Qualifying Interests are the Barnacle Goose

Conservation Objectives are "to maintain/restore the favourable conservation condition of the Barnacle Goose as defined by a list of attributes and targets"

This SPA and SAC lies due west of the most westerly point of Slieve League SAC ; the island lies approx 11 kms west of the project location.

#### Rathlin O'Brien Island SAC

Qualifying Interests are reefs

Conservation Objectives are "to maintain/restore the favourable conservation condition of the reefs as defined by a list of their attributes and targets"

#### St John's Point SAC

Qualifying Interests are - inlets and bays, sea cliffs, reefs, fens, limestone pavements, caves, grasslands, meadows, marsh fritillaries.

Conservation Objectives are "to maintain/restore the favourable conservation condition of the Qualifying Interests as defined by a list of attributes and targets"

The nearest point of the SAC to the site lies approx 15 kms to the S.E. There is not any pathway-source-receptor connection between the SAC and the project site

#### Slieve League SAC

Qualifying Interests are sea cliffs, heaths, blanket bogs, scree, rocky slopes, hydrophilus tall herb fringe communities

Conservation Objectives are "to maintain the favourable conservation condition of the Qualifying Interests as defined by a list of attributes and targets"

As the crow flies the nearest point of the SAC to the site lies approx 1km south of the interface between the afforestation stream and the public road; (cf "Aquatic Zone" note for further clarity)

#### West Donegal Coast SPA



Slieve League SAC is immediately adjoined to the south by the West Donegal Coast SPA. Its qualifying interests are seabirds such as fulmar, cormorant, shag, herring gull ... Conservation objectives are to maintain/restore the favourable conservation condition of the bird species listed as Special Conservation interests  
As the crow flies, the nearest point of the SPA to the site lies less than 3 km south of the point where the afforestation stream flows under the R263 (cf "Aquatic Zone" note for further clarity)

Slieve Toomey/Tormore Island/Loughros Beg Bay. SAC Qualifying Interests are sea cliffs, dunes, heaths, blanket bogs, whorl snail, otter and grey seal  
Conservation objectives are to maintain/restore the favourable conservation condition of the Qualifying Interests as defined for each one by a list of attributes and targets.  
The nearest point of the SAC to the site lies less approx 7.5 km to the N.W of the project location

## **11. EIA PRELIMINARY EXAMINATION/SCREENING**

Under the Forestry Reg's 2017 (S.I. No. 191 of 2017) the EIA mandatory threshold for a road is 2000m. (Art.13) (2) (d). In the current case the proposed road length of 180 m is significantly below the threshold.

Where a development is sub threshold, criteria used to determine whether such development should be subject to an EIS, are set out in 3 broad groupings at Schedule 3 of the above Regs, viz 1.Characteristics of projects, 2.Locations of projects, and 3.Type and Characteristics of Potential Impacts.

Having regard to the above criteria, but in particular

- to the length of the proposed forest road, (180m), the "once off" occurrence of the road construction process, the type of construction process proposed (excavation to weathered rock, fill with broken rock and surface with crushed graded rock hence, a low risk of material contamination),
  - the approved and existing land use which the project will service,
  - To the extensive range of issues considered in the EIA assessment section of the Inspector's Certification - Pre - Approval Report, including cumulative effects/impacts of the project in regard to forest cover and forest road network and the subsequent finding that those impacts are not likely to be significant for the purposes of EIA
  - the absorption capacity of the natural environment to accommodate any impacts likely to arise from the proposed project having regard to the 4km (approx) distance between the stream outfall into the Owenwee and the inlet mouth at Towny Bay which adjoins the Slieve League SAC and Donegal Coast SPA
  - the limited magnitude and spatial extent of any impact likely to be generated by a road of the scale proposed,
  - The archaeological compliance safeguards and conditions relating to the recorded monument to be attached to the Licence
- It would appear that significant effects on the environment are unlikely to be generated either individually or on a cumulative basis by the proposed project, and that an EIAR is therefore unnecessary in the current case.

## **12. APPROPRIATE ASSESSMENT**



The purpose of A.A. is to assess in a focused and detailed manner, the impact of the proposed development on the integrity of surrounding Natura sites, which lie within a one and 15 km radius of the site.

Stage 1 of the A.A process comprises Screening to determine

( a) whether the project is directly connected with or necessary to the management of the Natura 2000 sites identified

( b) whether the project is likely on an individual basis to have a significant effect on the integrity of the Natura 2000 sites having regard to their Qualifying Interests and Conservation objectives

( c) whether the project is likely in combination with other plans and projects to have a significant effect on the integrity of the Natura 2000 sites having regard to their Qualifying Interests and Conservation objectives.

( d) Whether within Stage 1 of the A.A Screening process, mitigation measures have been used to screen out a project from advancing to Stage 2 of the A.A process.( cf.CJRU and Irish Court decisions)

Re ( a) above as the project is not directly connected with or necessary to the management of a European site(s) screening therefore proceeds to Stage 1( b).

Re ( b) above, the nearest Natura site to the proposed project location is Slieve League SAC. The [gis.epa.ie](http://gis.epa.ie) mapping system shows it as being the only Natura 2000 site which has a direct connection (hydrological) with the project location.

However consideration of the following factors viz -

( i) the point of connection between the project location stream and the SAC which only occurs at a distance of approx 4kms south east of the project location at Towny Head where the inlet meets the sea.

( ii) The "once off" occurrence of the road construction process and the type of construction process proposed which ensures that the proposed development is unlikely to pose a material risk of contamination, and hence unlikely to give rise to significant effects/impacts on the environment

( iii) the duration of the project

( iv ) the nature of the Qualifying Interests and Conservation Objectives for Slieve League SAC would suggest that any effects/impacts likely to be generated by the project would not appear to threaten the integrity of the SAC.

( v ) The Inspector Certification - Pre- Approval report in which a comprehensive identification and assessment of potential impacts/effects likely to arise from the proposed project on the Slieve League SAC was undertaken, all leads to the conclusion that the A.A Screening process undertaken by the Inspector was robust and in accordance with the test for A.A.Screening set out in Kelly v ABP [2014 IEHC 400 ].

In regard to Donegal Coast SPA, - the SPA nearest to the site , again the nature of the Qualifying Interests and Conservation Objectives for that SPA suggests that a project of the nature, scale and duration proposed when combined with its distance to the nearest point of the SPA is unlikely to have any significant impact on it. It should be noted that impacts on that SPA were also identified and assessed in The Inspector Certification - Pre -Approval report.

Re (c) above - cumulative impacts - the Inspector Certification - Pre- Approval Report also considered same and concluded that there was no possibility that the project would have a significant effect on the Natura site.(I note however that the other plans and projects consulted were not listed which is regrettable as it leads to a lack of transparency in the process)

Re (d) above - mitigation - I refer to the Inspector's A.A.S careening conclusion which states that

*Any safeguards within the project or any conditions attached to any approval issued are unrelated to the protection of any Natura site.*

Having regard to the conditions attached to the Licence I concur with that statement

### **13. CONCLUSION**

Despite the AA Screening exercise being characterised by a lack of transparency in regard to the proposed project, I consider that the conclusion that the project be screened out for A.A. is appropriate based on the Screening Exercise undertaken by the Inspector, I am therefore unable to endorse or concur with the appellant's grounds of appeal.

Mary Cunneen  
24. 5.2020