



An Coiste um Achomhairc
Foraoiseachta

Forestry Appeals Committee

29 October 2020

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Our ref: 475/19

Subject: Appeal in relation to felling licence TFL00321919

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 TFL00321919.

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 TFL00321919 was granted by the Department on 06 December 2019.

Hearing

A hearing of appeal 475/19 was conducted by the FAC on 08 October 2020.

FAC Members: Mr Des Johnson (Chairperson), Mr Vincent Upton, Ms Bernadette Murphy 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 affirm the decision in respect of this licence (Reference TFL 00321919).

The proposal is for the clear-fell and restocking of 72 parcels of land on a total area of 11.10ha at Meenbog and Croaghonagh, County Donegal. Trees to be felled are predominantly Sitka Spruce, with small amounts of Lodgepole Pine and Alder. The proposed development is stated to be integral to a wind farm development comprising 19 wind turbines, grid connection and associated site works, granted planning approval by An Bord Pleanála under Reference ABP-300460-17. The Environmental Impact Assessment Report (EIAR) indicated that existing coniferous trees would be felled to allow for the construction of the wind farm. Most of the plots proposed to be felled are circular and would

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provide for the construction of wind turbines. The average size of the circular plots is 1470sq.m. The documentation submitted indicates that 2 previous licences were granted, and not appealed, for tree felling to facilitate the construction of a wind farm with 19 wind turbines on the same lands as the current proposed plots (Reference TFL 00321819 & TFL 00317919).

The project lands are in an elevated location north-east of the Barnsmore Gap and Barnsmore Mountain, and very close to the border with Northern Ireland. The subject lands are within the catchment of the Mourne River (EPA maps). Forestry and peatlands are the predominant land uses in the area. There is an existing windfarm at high level to the east of Barnsmore Mountain.

The application was referred to Donegal County Council and Inland Fisheries Ireland (IFI). The County Council responded stating that the site comprises an area on mature upland commercial coniferous forestry in an area designated Moderate Scenic Amenity in the County Development Plan. There are no defined views and prospects across the site, and no Recorded Monuments or Tree Preservation Orders on the site. The Council raises no objections on grounds of landscape/amenity. There is no response from IFI on file.

The DAFM carried out a Stage 1 screening for Appropriate Assessment, examining 13 Natura 2000 sites within a 15km radius of the project lands. It concluded that the proposed development alone or in combination with other plans and projects would give rise to the likelihood of significant effects arising on European sites, namely River Foyle and Tributaries SAC, Pettigo Plateau Nature Reserve SPA, Croaghonagh Bog SAC and River Finn SAC. The DAFM concluded an Appropriate Assessment Determination statement on 27 November 2019 in advance of the issuing of the licence. The DAFM state that the underlying soils on the project lands are 100% peat.

The DAFM made a decision to grant the licence subject to 7 standard conditions. The licence issued on 6th December 2019 and is exercisable for 2 years from that date.

There is a single appeal against the decision to grant the licence. The grounds contend that, based on the information supplied, it was not possible to make a decision in compliance with the requirements of the Habitats and EIA Directives. Reference is made to several Court judgments. The DAFM identified Natura 2000 sites within a 15km radius and this should be a trigger for Appropriate assessment. The Inspector fails to show evidence to support answers given in respect of Appropriate Assessment screening. The DAFM fails to state which catchment the proposed development is in. Mitigation measures cannot be considered at screening stage for Appropriate Assessment, and safeguards published in Forestry Service guidelines are, in fact, mitigation measures intended to avoid or reduce harmful effects on Natura 2000 sites. It is only necessary to conclude that there is a possibility of significant effect to trigger Appropriate Assessment.

In response, the DAFM stated that, having reviewed the details of relevant Natura sites, their qualifying interests and conservation objectives, it was concluded that the possibility of significant effects on Natura sites could not be ruled out, and the project was screened in for Appropriate Assessment. The DAFM considered the felling licence application details and all planning documentation associated with the windfarm development. The NIS and EIAR submitted with the planning application for the wind farm, and Appropriate Assessment conducted by An Bord Pleanála were reviewed and considered. In an AA Determination Statement dated 27th November 2019 the DAFM states that it is satisfied that, based on objective information, the proposed development will



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accord with industry best practice as referenced in conditions attached to the felling licence, mitigation prescribed in the NIS, EIAR and planning approval conditions associated with ABP Reference: 300460-17. The DAFM concluded that the proposed felling and replanting, individually or in combination with other plans or projects, would not adversely affect the integrity of any European site.

The FAC sought a 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 12th October 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 the proposed development is not located within a designated Natura 2000 site and is not related to or necessary for the management of any designated Natura site. The report notes that, while the DAFM Stage 1 screening identified 13 Natura sites within a 15km radius of the project lands, the screening carried out by An Bord Pleanála identified 17 such sites. The report lists the 17 designated sites, their separation distances from the project lands, their qualifying interests and conservation objectives. The consultant concludes that the proposed felling and replanting, considered itself or in combination with other relevant plans and projects, would not be likely to have significant effects on 14 listed Natura 2000 sites, but that 3 sites should be screened in for Stage 2 Appropriate Assessment, namely the River Finn SAC, River Foyle and Tributaries SAC and the Croaghonagh Bog SAC. The report notes that two additional sites, Pettigo Plateau Nature Reserve SPA and Lough Eske and Ardnamona Wood SAC, were screened in for Appropriate Assessment by An Bord Pleanála and proceeded to Stage 2 assessment. In the case of Pettigo Plateau Nature Reserve SPA the consultant's report concludes that there would be no likely significant effects on the Natura site on the basis of separation distance and the fact that mature and semi mature plantation does not provide suitable foraging or roosting for the qualifying interests, the Greenland White Fronted Geese. In the case of Lough Eske and Ardnamona Wood SAC, the report reaches a conclusion of no likelihood of significant effects on the Natura site as the proposed felling would have no effect on water flow or quality in the SAC, and because of the separation distance involved and the absence of hydrological connection or other pathway. The report considers planning permissions granted in the area and concludes that none would have in combination effects with the proposed development. The FAC considers that the Stage 1 screening in the consultant's report complies with the requirements of the Habitats Directive and adopts the assessment and conclusions reached.

The consultant's report notes that the proposed tree felling formed part of the preliminary ground preparation works for the wind farm permitted by An Bord Pleanála (Reference: 300460-17) and concludes that adequate information is available in order to carry out a Stage 2 Appropriate assessment. The FAC agrees with this conclusion. The Stage 2 assessment considers three Natura 2000 sites, namely the River Finn SAC in the Republic, the River Foyle and Tributaries SAC in Northern Ireland and Croaghonagh Bog SAC in the Republic. The report notes that there is some overlap of the River Finn SAC and the River Foyle and Tributaries SAC as the Mourne Beg River, which is part of both sites,

forms the boundary between the two jurisdictions. In respect of these two SACs, the consultant referred to the EIAR submitted to An Bord Pleanála for the wind farm and noted that no major infrastructural components of the wind farm would be located within 50m of any stream and that a buffer zone of 50m from the main streams would generally be maintained during construction. Mitigation measures are proposed, including silt traps, sedimentation ponds and compliance with a Construction and Environmental Management Plan preventing water pollution and soil or sediments entering the main streams. All construction methods and environmental mitigation measures contained in the EIAR must be implemented in full under the terms of the planning approval. In addition, the proposed tree felling would have to comply with the conditions of the licence. The report identifies the only likely in combination effect as likely to arise as being the possible transmission of sediment or soil to watercourses and onwards to the SAC where the only qualifying interest likely to be impacted is salmon. The report notes that site surveys in the EIAR revealed that no salmon were present in any on site streams, although trout were recorded. The report concludes that, with the proposed mitigation measures, residual impacts from the release of pollutants would be neutral, and that there would be no long-term impact of the use (if any) of the lands by otter. In relation to the 2 SACs, the report concludes that, subject to compliance with the mitigation measures proposed, the proposed felling by itself, or in combination with other adjacent tree felling already licenced and the permitted wind farm would not adversely affect the integrity of the two designated sites.

In respect of Croaghonagh Bog SAC, the report notes that the closest plots for felling are approximately 210m from the SAC at the nearest point and that the plots comprise a total area of approximately .928ha. The tree felling proposed appears to facilitate a temporary construction compound or a sub-station for the wind farm, or both. The report concludes that, subject to the compliance with mitigation measures proposed and having regard to the qualifying interests (Blanket Bogs) and conservation objectives of the designated site, the proposed felling by itself, or in combination with other adjacent tree felling previously licensed and the permitted wind farm would not adversely affect the integrity of Croaghonagh SAC.

The FAC considers that the conclusion of the Stage 2 assessment in the consultant's report is consistent with the conclusion reached by the DAFM in its Determination Statement that the proposed development alone, or in combination, would not adversely affect the integrity of any European site. The FAC adopts the conclusion of both the DAFM determination and the consultant's report in this regard.

While the report concludes that the proposed development does not come within the classes of development covered by the EIA Directive, reference is made to Class 13 of Annex II (any change to a project already approved which may have significant effects on the environment). The FAC notes that the application states that the proposed development involves a change of land use to 'Supporting Energy and Energy Security'. Having regard to the nature and scale of the proposed development, the FAC is of the view that there are significant doubts that the proposed development falls within either of these classes. However, given that doubt may remain, the FAC considered that a preliminary screening in the context of EIA should be undertaken.

The consultant's report includes a preliminary screening in respect of Environmental Impact assessment (the report notes that the wind farm project had previously been subject to EIA in the planning process). The screening had regard to the characteristics of the project (including the



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environmental sensitivity of the area) and the types and characteristics of potential impacts of the proposed felling. It also had regard to the conclusions reached in respect of likely impacts on Natura sites.

The report refers to a number of existing wind farms in the area, which is characterised by mountainous/upland with forestry, bogs, heaths, lakes and bare rock. There are high voltage power lines impacting the scenery and landscape. The landscape around the project lands are indicated to be either High Scenic Amenity or Moderate Scenic Amenity in the County Development Plan. The proposed tree felling within a large coniferous forest would have no significant effect on the landscape of the area. Other than possible impacts on water quality there are no cumulative effects of significance arising from the proposed felling. The report concludes that the proposed felling and replanting would not have a significant effect on the wider landscape. There would be some additional traffic arising from the transport of timber on the roads in the area but this would not be significant and there would be no significant cumulative effects with traffic generated by the construction of the wind farm. There would be no significant effects on the environment due to water or air pollution including any emissions that might have any significant effect on climate change. There are no National Monuments in the vicinity and no adverse impact on biodiversity arising from the proposed felling and replanting. The report concludes that the proposed development of itself or cumulatively with other permitted projects would not be likely to have significant effects on the environment. The FAC concurs with this conclusion.

In deciding to affirm the decision to grant the licence, the FAC considered that the making of the decision by the DAFM did not involve any serious or significant error or a series of errors or that the decision was made without complying with fair procedure. The FAC further concluded that the proposed development of itself, or in combination with other plans or projects, would not be likely to have an adverse effect on the integrity of any Natura 2000 site and would not give rise to the likelihood of significant effects on the environment.

Yours Sincerely

Pat Coman, on behalf of the FAC

FAC Case Ref. 475/2019

DAFM Case Ref 00321919

Details of application:

The application is for clear-felling and replanting 72 parcels of land in the townlands of Meenbog and Croaghonagh in an upland area of rural Co Donegal to the northeast of Barnsmore Gap which is on the Donegal to Balltbofey national primary road. It appears from the documentation that 75 parcels of land were originally indicated (1-75) but 3 parcels (9, 53 and 54) were later omitted on the basis that there were no trees for felling in these plots. The information in the documentation indicates that the trees to be felled are mostly Sitka spruce. Some Lodgepole pine and Alder trees are also indicated. The replanting would also be mainly with Sitka spruce. The documentation indicates that trees have already been felled in plots 4, 49, 50, 61, 62 and 63.

The documentation suggests that all plots with the exception of plots 1, 2 and 3 form part of circles surrounding proposed wind turbines. It appears that these additional lands are required to facilitate the construction of the masts but the lands can be replanted. The documentation indicates that 2 licences (Ref. TFL 00321819 and Ref. TFL 00317919) have previously been granted for tree felling to facilitate the construction of a wind farm of 19 wind turbines on the lands of which the plots now in question form part. There is no evidence of there being any appeal against the 2 previous licences.

The 72 plots in question comprise a total area of 11.10 hectares. It is indicated that plots 1, 2 and 3 combined comprise a total area of .928 hectares. The average size of the other plots where felling is proposed is accordingly about 1470 sq. metres.

The application indicates that the plots would be replanted and the application form indicates also that the proposed new land use would be in support of renewable energy and energy security. Reference is made to An Bord Pleanála case reference number 300460-17 which refers to an application and planning permission for a wind farm development including all roads and associated works. (The EIAR submitted with the application indicated that existing coniferous trees would be felled to allow for the construction of the wind farm).

Location and description of project lands:

The lands are in an elevated upland location on the east side of the N15 about 14 kilometres northeast of Donegal Town and 10 kilometres southwest of Ballybofey. The lands are located very close to the border with Northern Ireland. The border with Northern Ireland is indicated on the location map to scale 1:25000 submitted with the application.

The lands are located to the northeast of Barnsmore Gap and of the peak of Barnsmore mountain. The northern part of the lands close to the local road (L6554-called Dearg Line Road in the Republic and Calgary Road in Northern Ireland) is

located close to the 607-foot contour indicated on the O.S. maps. The south-western part of the lands rises to above the 1007-foot contour (Carrignduff Hill). The bulk of the lands where the wind farm is proposed dip down towards the northeast and are drained by a number of streams (Mary Breen's Burn, Bunadaowen River and Srugangarve river) flowing north-eastwards to the Mourne Beg River which is on the north side of the local road. The Mourne Beg River flows towards the southeast and joins the Derg River to the southwest of Castlederg in Northern Ireland. The Derg River flows north-eastwards past Castlederg to join the Strule River northwest of Newtown Stewart. The joint rivers become the Mourne River and this flows northwards through Sion Mills and Strabane to join the Finn River at Lifford. The combined rivers become the Foyle and this flows northwards to Lough Foyle, north of Derry. A small part of the wind farm lands at the southern end dip down from Carrickaduff Hill towards the southeast. These lands are drained by streams which flow to the southeast to the Glendergan River in Northern Ireland. This river also drains to the River Derg. (The EPA maps indicate all the lands, where tree felling is now proposed as being in the catchment of the Mourne River).

Land uses in the area are a mixture of agriculture, forestry and peatlands. Forestry and peatlands predominate in the vicinity of the project lands. There are peatlands on the sides of the local road to the east of the junction with the N15. (The AA screening carried out by the Department indicates the soil is 100% peat in the project lands). Forestry takes over as one approaches the location where the tree felling is proposed. The Google maps indicate that clear felling has been carried out relatively recently in patches of the forestry in the vicinity of the lands where felling is now proposed.

There are few houses and no settlements in the immediate vicinity. The nearest house is a large 2 storey house located about 800 metres to the northeast. There is another relatively new house and an older house between the house referred to and the Northern Ireland border which is about 1.1 kilometres to the east of the northern end of the lands. (The border is however much closer to the lands at the location of plots 46-55 and 64-72). There are a couple of older houses, which appear unoccupied, close to the location where the Bunadaowen River crosses the local road to the north. At least one of these may be used on occasion as a holiday home. This house is about 600 metres from the nearest proposed tree felling.

There is an existing wind farm located at a high level in lands to the east of Barnsmore Mountain to the south of the project lands. Access to this existing wind farm is from a road which joins the N15 south of Barnsmore Gap. The tops of some of the turbines in this wind farm can be seen on the skyline from parts of the N15. The Barnsmore Gap, where the N15 cuts through the mountains, contains a number of high voltage power lines which impact on the scenery and landscape of the area.

DAFM decision:

The Department decided to approve the tree felling and replanting proposed and to grant a licence. The licence was subject to 7 standard conditions. Condition number 1 requires adherence to all relevant standards and guidelines including Forestry and

Water Quality and Forestry Harvesting and the Environment. Condition number 7 requires adherence to the Standards for Felling and Re-forestation (October 2019).

Grounds of appeal:

In his submission to the Department the appellant argued on the basis of the information made available to the public it was not possible to grant a licence in accordance with the EU Habitats and Environmental Impact Assessment Directives. He referenced 4 decisions of the EU Court of Justice to support this argument.

It is submitted in the appeal that the Forest Service in its Screening for Appropriate Assessment found that there were Natura sites within the 15km zone of impact. That is a trigger for the requirement for Appropriate Assessment as the development may have an effect. Therefore, there may be an impact.

It is also noted that the inspector answered yes to the following questions. Q3. (As District Inspector, have you reviewed all referral responses and submissions received in relation to this project and this AA screening process?) and Q4. (Is there sufficient information within the application and available from elsewhere to form a sound judgement as to whether or not the project is likely to have a significant effect on a Natura site?). It is submitted that the inspector fails to show any evidence on which these answers are based.

It is submitted by the appellant that the inspector finds that the Natura site(s) is in a different catchment but fails to state which catchment the development is in, or state why it may not have an effect. It is submitted that in these circumstances the only legal answer is that the application must be screened in for Appropriate Assessment.

The appellant submits that the EU court judgement in Case C-323/17 states that Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site. He submits that: safeguards published in the Forest Service guidelines, requirements & procedures are in fact measures intended to avoid or reduce the harmful effects of the plan or project on that site. He submits that any decision must comply with the "Commission notice" "Managing Natura 2000 sites. The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC", which interprets the relevant judgements of the CJEU.

The appellant also submits that The Irish Courts have interpreted the requirements for Appropriate Assessment Screening in the judgement on Kelly -v- An Bord Pleanala & others (Judgement of Finlay Geoghegan J). which states; "There is a dispute between the parties as to the precise obligations imposed on the Board in relation to the stage 1 screening by s.1777U but its resolution is not strictly necessary in these proceedings. There is agreement on the nature and purpose of the screening process which is well explained by Advocate General Sharpston in Case C-258/11 Sweetman at paras 47-49". Para 47 of that opinion states that it

follows that the *possibility* of there being a significant effect on the site will generate the need for an appropriate assessment for the purposes of Article 6(3). The requirement at this stage that the plan or project be likely to have a significant effect is thus a trigger for the obligation to carry out an appropriate assessment. There is no need to *establish* such an effect; it is, merely necessary to determine that there *may* be such an effect.

DAFM response to appeal:

It is submitted that Appropriate Assessment screening was carried out by the Department for Natura sites within a 15 km zone of influence from the clear-fell (and reforestation) project submitted for licencing. Referrals to 3rd parties were issued as per existing procedures. Appropriate Assessment screening was carried out using a desktop GIS - ESRI ArcGIS, using data sourced from the felling licence applicant, Enerco Energy Ltd.

It is submitted that the felling licence application information submitted by the applicant in the form of maps (GIS data and softcopy) and felling licence data were considered. The tree felling and replanting as specified in the licence submission DAFM/Forest Service Ref. TFL00321919 is integral to a project inter alia involving the construction of a wind farm comprising 19 wind turbines, grid connection and all associated site works, which was the subject of an approved development (An Bord Pleanála Reference Number: ABP-300460-17). (That application represented a revision to a previously refused 49 turbine wind farm which was refused planning permission by An Bord Pleanála in 2016 under Planning Reference Number: PL05.PA0040. A detailed description of the windfarm project is included in the NIS and EIAR submitted for the permitted development at the site (An Bord Pleanála Reference Number: ABP-300460-17).

As part of the proposed development, tree felling will be required within and around the development footprint to allow the construction of turbine bases, access roads and the other ancillary infrastructure. In the case of this felling licence application i.e. TFL00321919, the area (approximately 11.10 ha) to be clear felled will also be replanted. Having reviewed the details of relevant Natura sites their qualifying interests and conservation objectives the Department deemed that the project, when considered in combination with other plans and projects may give rise to the possibility of a significant effect on relevant screened Natura sites. As such, the clear-fell project was "screened in" for Appropriate Assessment.

The findings of the AA Screening exercise were restated in the AA Determination Statement for TFL00321919. The Department considered the felling licence application and all planning documentation associated with the permitted development at the site (ABP-300460-17). The felling and replanting activities associated with the permitted development were assessed as part of the planning consent process. The NIS/AASR and EIAR for the permitted development were reviewed and considered in the formulation of the AA determination arrived at by the Department. In addition, the EIA and AA conducted by An Bord Pleanála was reviewed and considered.

It is submitted that the Department/Forest Service is satisfied, on the basis of objective information, that the proposed felling and replanting activities can and will be undertaken in accordance with industry best practice as referenced in conditions of the felling licence (TFL00321919), and the mitigation prescribed in the NIS, EIAR and planning conditions associated with the permitted development (ABP-300460-17). The Department/Forest Service determined, pursuant to Regulation 42(11) of the European Communities (Birds and Natural Habitats) Regulation 2011 (as amended), on the basis of objective information, that the project for tree felling and replanting (TFL00321919), individually or in combination with other plans or projects will not adversely affect the integrity of any European Site. A felling licence was issued for the clear-fell project TFL00321919 having considered the comments and observations of referral bodies who submitted information to the Department in respect of the licence application.

No change to the recommendation to grant a licence is proposed in the response from the Department.

Appropriate Assessment screening:

The project lands are not located within a designated Natura 2000 site and the tree felling proposed is not related to or necessary for the management of any designated Natura site.

There are several Natura 2000 sites located within 15 Kilometres of the project lands in the Republic of Ireland and in Northern Ireland. 13 such sites are indicated within 15 kilometres in the AA screening carried out by the Department. I note however that 17 sites are indicated as being within 15 kilometres in the assessment carried out by the An Bord Pleanála inspector in her report on the planning application. The 17 sites listed in the report with reference numbers, qualifying interests and distances from the site boundary (of the planning application site) and the works proposed in the wind farm proposal (as contained in the Inspector's report) are

Croaghonagh Bog 000129 Blanket Bog Adjoins NW boundary Adjoins access road

River Foyle & Tributaries UK 030320 Atlantic salmon Ranunculion veg Otter Adjoins SE boundary 4km from works

Lough Eske & Ardnamona Wood 000163 Oligotrophic waters Petrified springs Salmon & FWPM Adjoins end of GCR, 4.6km from site

River Finn 002301 Oligotrophic waters Wet Heaths, Blanket/Quaking Bog, Salmon & Otter 1.0km NE of boundary 4km from works

Dunragh Loughs/ Pettigo Plateau 001125 Wet heaths Blanket Bog 6km S of boundary 5km from works

Meenaguse Scragh 001880 Wet heath 13km W of boundary 10km from works

Lough Nageage 002135 Crayfish 13km SE of boundary 17km from works

Meenaguse/ Ardbane Bog 000172 Blanket bogs 13.5km W of boundary 9.5km from works

Monegal Bog UK003211 Raised bogs 13.5km E of boundary 18km from works

Donegal Bay 000133 Mudflats Dunes & slacks 14km SW of boundary 8km from GCR works

Lough Nillan Bog 000165 Oligotrophic waters Blanket bogs 15km W of boundary 12.5km from works

Tamur Bog 001992 Wet heaths Blanket bogs Peat depressions 15km S of boundary 12km from works

Ballintra Bog 000115 Dry heaths Limestone 20km S of boundary 15km from works

Lough Derg 004057 Lesser BB Gull Herring Gull 7.5km S of boundary 8.5km from works

Pettigo Plateau Nature Reserve 004099 Greenland White Fronted Goose (GWFG) 8.7km S of boundary 6.3km from nearest off-site works

Donegal Bay 004151 Great N Diver Brent goose Common Scooter Sanderling Waterbirds 14km S of boundary 8km from nearest offsite works

Lough Nillan Bog 004110 Merlin Golden plover GWFG & Dunlin 15km W of boundary 13.5km from nearest off-site works.

The inspector considered that the wind farm proposal under consideration by the Board was likely to have a significant effect on 5 of the sites listed in her stage 1 screening i.e. an appropriate assessment to establish if the project would adversely affect the integrity of the site was required in the case of 5 sites. The 5 sites subjected to stage 2 appropriate assessment were

Croaghonagh Bog SAC

River Finn SAC

River Foyle & Tributaries SAC

Lough Eske & Ardnamona Wood SAC

Pettigo Plateau Nature Reserve SPA

The following section of this report deals with the sites listed above in order of distance from the locations where tree felling is proposed in the current application.

The Ballintra SAC (000115) is located to the south west at a distance of about 21 kilometres from the nearest location where tree felling is proposed in the current application. The project lands drain to the Mourne River catchment and ultimately to Lough Foyle. There is no hydrological connection to the Ballintra SAC which is located in the Ballintra–Coastal catchment. The qualifying interests of the SAC are European dry heaths [4030] and Limestone pavements [8240]. Having regard to the qualifying interests, the distance from the project lands and the absence of any hydrological or other potentially impacting pathway the tree felling of itself or in-combination with the permitted wind farm would not be likely to have any significant effect on the Ballintra SAC.

Tamur Bog [001992] SAC is located about 15.58 kilometres south of southwest from the closest felling location. The SAC is in the Ballintra-Coastal catchment. The qualifying interests are Northern Atlantic wet heaths with *Erica tetralix* [4010], Blanket bogs (* if active bog) [7130] and Depressions on peat substrates of the *Rhynchosporion* [7150]. Drainage from the project lands is in the opposite direction

from the location of the SAC. The tree felling proposed would have no impact on the hydrological regime at the SAC. Having regard to the qualifying interests, the distance from the project lands and the absence of any hydrological or other potentially impacting pathway the tree felling of itself or in-combination with the permitted wind farm would not be likely to have any significant effect on the Lough Tamur Bog SAC.

Donegal Bay SAC [000133] is located to the southwest at a distance of about 15.4 kilometres from the nearest point of the proposed tree felling. Drainage from the project lands is eastwards and then northwards. There is no downstream connection to Donegal Bay to the southwest. The qualifying interests of the SAC are

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

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

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

Humid dune slacks [2190]

Phoca vitulina (Harbour Seal) [1385]

Having regard to the qualifying interests, the distance from the project lands and the absence of any hydrological or other potentially impacting pathway the tree felling of itself or in-combination with the permitted wind farm would not be likely to have any significant effect on the Donegal Bay SAC.

Donegal Bay [004151] SPA is located at the closest point about 15.4 kilometres to the southwest of the closest tree-felling proposed. Similar circumstances apply as apply to Donegal Bay SAC in so far as drainage connection is concerned. The qualifying or special interests of the SPA are

Great Northern Diver (*Gavia immer*) [A003]

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

Common Scoter (*Melanitta nigra*) [A065]

Sanderling (*Calidris alba*) [A144]

Wetland and Waterbirds [A999]

A mature or semi mature coniferous forest is not a suitable or habitat of choice for the water birds for which the SPA has been designated. The lands are also not suitable and are outside the normal foraging distances for the birds for which the SPA has been designated. Having regard to the qualifying interests, the distance from the project lands and the absence of any hydrological or other potentially impacting pathway the tree felling of itself or in-combination with the permitted wind farm would not be likely to have any significant effect on the Donegal Bay SPA.

Lough Nillan Bog SAC [000165] is located about 15.03 kilometres to the west of the nearest point where tree felling is proposed. This SAC is located in a number of different coastal river catchments. There is no downstream hydrological connection from the project lands. The qualifying interests are Oligotrophic waters containing very few minerals of sandy plains (*Littorelletalia uniflorae*) [3110] and Blanket bogs (* if active bog) [7130]. The tree felling proposed would have no impact on the

hydrological regime at the SAC. Having regard to the qualifying interests, the distance from the project lands and the absence of any hydrological or other potentially impacting pathway the tree felling of itself or in-combination with the permitted wind farm would not be likely to have any significant effect on the Lough Nillan Bog SAC.

The Lough Nillan Bog SPA [000165] is located about 15.03 kilometres to the west of the nearest point where tree felling is proposed. Similar circumstances apply in relation to drainage as apply to Lough Nillan Bog SAC. The qualifying or special interests for the designation of the SPA are

Merlin (*Falco columbarius*) [A098]

Golden Plover (*Pluvialis apricaria*) [A140]

Greenland White-fronted Goose (*Anser albifrons flavirostris*) [A395]

Dunlin (*Calidris alpina schinzii*) [A466]

Mature or semi-mature forest is not a suitable habitat for nesting or foraging the species of bird for which the SPA has been designated. Having regard to the qualifying interests, the distance from the project lands and the absence of any hydrological or other potentially impacting pathway the tree felling of itself or in-combination with the permitted wind farm would not be likely to have any significant effect on the Lough Nillan Bog SPA.

The Monegal Bog SAC in Northern Ireland is located to the east about 13.9 kilometres from the closest location of tree felling. The SAC is located partly in the Finn River catchment and partly in the Mourne catchment. The part in the Mourne catchment is to the north of Castlederg and at a higher level than the river Derg in the town. The area drains southwards towards the Derg River and Castlederg through the Back Burn. There is no hydrological connection from the project lands downstream to the SAC. The tree felling and re-planting would have no impact on the water flow or quality at the SAC. The SAC has been designated for its Active Raised Bog habitat. Having regard to the qualifying interests, the distance from the project lands and the absence of any hydrological or other potentially impacting pathway the tree felling of itself or in-combination with the permitted wind farm would not be likely to have any significant effect on the Monegal Bog SAC.

Lough Nageage SAC [002135] is located to the southeast at distance of about 13.75 kilometres from the nearest proposed tree felling. This SAC is located in the catchment of the River Erne. There is no downstream hydrological connection from the lands where felling is proposed to the SAC. The qualifying interests for the SAC are *Austropotamobius pallipes* (White-clawed Crayfish) [1092]. The tree felling proposed would have no impact on the hydrological regime, in terms of water quality or quantity, at the SAC. Having regard to the qualifying interests, the distance from the project lands and the absence of any hydrological or other potentially impacting pathway the tree felling of itself or in-combination with the permitted wind farm would not be likely to have any significant effect on the Lough Nageage SAC.

The Meenaguse/ Ardbane Bog SAC [000172] is located about 13.57 kilometres to the west of the nearest proposed tree felling. The SAC is in the catchment of the Eany Water which drains to the sea west of Mountcharles. There is no downstream hydrological connection from the lands where felling is proposed to the SAC. The

qualifying interests for the SAC are Blanket bogs (* if active bog) [7130] The tree felling proposed would have no impact on the hydrological regime at the SAC. Having regard to the qualifying interests, the distance from the project lands and the absence of any hydrological or other potentially impacting pathway the tree felling of itself or in-combination with the permitted wind farm would not be likely to have any significant effect on the Meenaguse/Ardbane Bog SAC.

The Meenaguse Scragh SAC [001880] is located about 12.8 kilometres to the west of the nearest tree felling proposed. Similar drainage circumstances apply as in the case of the Meenaguse/Ardbane SAC except that a small part of the SAC is in the River Finn catchment. There is no downstream hydrological connection from the lands where felling is proposed to the SAC. The qualifying interests for the SAC are Northern Atlantic wet heaths with *Erica tetralix* [4010]. The tree felling proposed would have no impact on the hydrological regime at the SAC. Having regard to the qualifying interests, the distance from the project lands and the absence of any hydrological or other potentially impacting pathway the tree felling of itself or in-combination with the permitted wind farm would not be likely to have any significant effect on the Meenaguse Scragh Bog SAC.

The Pettigo Plateau Nature Reserve SPA [004099] is located, at the closest point, about 8.9 kilometres to the south of the nearest tree felling area. The SPA is located partly in the Mourne catchment and partly in the Ballintra-Coastal catchment. The part in the Mourne catchment drains to the Derg River which joins the Mourne Beg River near Castlederg well downstream of where the drainage from the project lands joins the Mourne Beg. There is, accordingly, no downstream hydrological connection from the project lands to the SPA. The qualifying or special interests of the SPA are Greenland White-fronted Goose (*Anser albifrons flavirostris*) [A395]. A mature or semi-mature forest is not a suitable habitat or one used for foraging or roosting by Greenland White-fronted Geese. Having regard to the qualifying interests, the distance from the project lands and the absence of any hydrological or other potentially impacting pathway the tree felling of itself or in-combination with the permitted wind farm would not be likely to have any significant effect on the Pettigo Plateau Nature Reserve SPA.

I am aware that the Pettigo Plateau SPA was screened in for stage 2 appropriate assessment in the screening carried out by An Bord Pleanála for the wind farm on the lands. I am also aware that in its screening the Department also screened in this site and carried out a stage 2 determination for the site. I have considered in-combination effects between the potential effects of the tree felling and the effects of various phases of the wind farm development. I consider that there could conceivably be in-combination effects particularly between the construction phase of the wind farm and the tree felling in terms of water pollution due to the transport of sediment to water courses from the various tree felling activities (including these now proposed and other felling already licenced) and the construction works on the wind farm. I do not consider that possible effects on the Natura site from the wind farm such as collisions or flight interference to be in-combination effects between the wind farm and the tree felling. Effects such as those referred to, which could arise from the operation of the wind farm, have already been assessed in the Appropriate Assessment carried out by An Bord Pleanála.

In her report on the wind farm planning application the An Bord Pleanála Inspector noted that the NIS had concluded that the wind farm site was not used by the Greenland White Fronted Geese that occupy the Pettigo Plateau Nature Reserve SPA, as the site lies outside the 8 kilometre core foraging distance for the species (SNH data) and as the bird surveys confirmed that the wind farm site was not regularly overflown by the species. Having regard to the qualifying interests of the Pettigo Plateau Nature Reserve SPA, the un-suitability of a mature or semi mature plantation as a foraging or roosting area for the qualifying interest and the distance involved, I consider that the tree felling proposed, of itself or in-combination with other permitted developments is not likely to have any significant effect on the Pettigo Plateau Nature Reserve SPA. (The basis for my consideration of in-combination effects as set out here also applies in the case of all other Natura sites).

The Lough Derg SPA is located about 7.88 kilometres south of the nearest area where tree felling is proposed. The drainage from the lake is to the Derg River which joins the Mourne Beg River near Castlederg well downstream of where the drainage from the project lands joins the Mourne Beg. There is, accordingly, no downstream hydrological connection from the project lands to the SPA. The qualifying or special interests of the SPA are Lesser Black-backed Gull (*Larus fuscus*) [A183] and Herring Gull (*Larus argentatus*) [A184]. A mature or semi-mature forest is not a suitable habitat or one used for foraging or roosting by the bird species in question. Having regard to the qualifying interests, the distance from the project lands and the absence of any hydrological or other potentially impacting pathway the tree felling of itself or in-combination with other permitted developments including the permitted wind farm would not be likely to have any significant effect on the Lough Derg SPA.

The Dunragh Loughs/Pettigo Plateau SAC is located about 6.4 kilometres south of the nearest area where tree felling is proposed. This SAC is located partly in the Mourne catchment and partly in the Ballintra-Coastal catchment. The part which is in the Mourne catchment drains to the Derg River which joins the Mourne Beg River to the southwest of Castlederg downstream of the lands where the tree felling is proposed. There is no downstream hydrological connect from tree felling lands to the Dunragh Loughs/Pettigo Plateau SAC. The qualifying interests of the SAC are Northern Atlantic wet heaths with *Erica tetralix* [4010] and Blanket bogs (* if active bog) [7130]. The tree felling proposed would have no effect on the water regime in the SAC. Having regard to the qualifying interests, the distance from the project lands and the absence of any hydrological or other potentially impacting pathway the tree felling of itself or in-combination with other permitted developments including the permitted wind farm would not be likely to have any significant effect on the Dunragh Loughs/Pettigo Plateau SPA.

The Lough Eske & Ardnamona Wood [000163] SAC is located at the nearest point about 5.51 kilometres to the west of the southern part of the lands where tree-felling is proposed. The SAC is located in the catchment of the Eske or Eask River. As the tree felling is located in the Mourne catchment there is no downstream connectivity from the lands where tree felling is now proposed to the SAC in question. The qualifying interests for designating the SAC are

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

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

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

Margaritifera margaritifera (Freshwater Pearl Mussel) [1029]

Salmo salar (Salmon) [1106]

Trichomanes speciosum (Killarney Fern) [1421]

The tree felling proposed would have no effect on the water flow or quality in the SAC. Having regard to the qualifying interests, the distance from the project lands and the absence of any hydrological or other potentially impacting pathway the tree felling of itself or in-combination with other permitted developments including the permitted wind farm would not be likely to have any significant effect on the Lough Eske & Ardnamona Wood SAC.

(My comments on in-combination effects with the wind farm contained in the assessment relating to the Pettigo Plateau Nature Reserve SPA also applies to the Lough Eske and Ardnamona Wood SAC. This site was also considered for stage 2 assessment by An Bord Pleanála (for the wind farm) and the Department in screening for this application. As the connection to the National Electricity Grid from the wind farm was partly in the Eske catchment this was required. I do not consider such to be required for the current application).

The River Finn SAC [002301] is located at the closest point about 1.28 kilometres from the nearest point of the proposed tree felling. This SAC is located to the northeast of the lands at the point where the Mourne Beg River approaches the border with Northern Ireland. (For clarity I would also point out that the River Finn SAC also includes Lough Derg and part of the Derg river to the east of the lake. These parts of the SAC are not downstream of the project lands. The main Finn river is to the north in the Ballybofey-Castlefinn area) The river then continues towards the southeast and forms the Republic/Northern Ireland border. The part of the river, in Northern Ireland, is part of the River Foyle and Tributaries SAC. This part of both SACs is in the Mourne catchment. Drainage from the permitted wind farm and from the areas where tree felling is proposed is to the Mourne Beg river which is on the opposite side of the local road to the north of the wind farm. There is hydrological connectivity to the SAC.

The qualifying interests of the River Finn are

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

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

Blanket bogs (* if active bog) [7130]

Transition mires and quaking bogs [7140]

Salmo salar (Salmon) [1106]

Lutra lutra (Otter) [1355]

The conservation objectives for the River Finn SAC are generally to restore the favourable conservation condition of the habitats for which the site has been designated and to maintain the favourable conservation condition of the animal species for which it has been designated.

The qualifying interests of the River Foyle and Tributaries SAC in Northern Ireland are Water courses of plain to montane levels with the *Ranunculion fluitantis* and

Callitricho-Batrachion vegetation, Atlantic Salmon and Otter. As the sites in question here overlap at the location to the northeast of the project lands they can be considered together. I would point out also that there is another part of the River Foyle and Tributaries SAC abutting the southeast corner of the lands. This part of the SAC is a continuation of streams draining the southern end of the wind farm site and the nearest tree felling now proposed would be about 200 metres from the SAC at this location.

Having regard to the qualifying interests of both the River Finn and River Foyle and Tributaries SACs, the distance from the project lands and the presence of downstream hydrological connectivity I consider that the tree felling, particularly considering in-combination effects with the construction of the permitted wind farm would be likely to have a significant effect on the 2 SACs in question. In coming to this conclusion, I consider that mitigation measures in relation to drainage during felling and construction, as contained in the licence, and recommended in the EIS submitted with the wind farm planning application and referred to in the decision of An Bord Pleanála, may be required to avoid adverse impact on the integrity of the sites in question. I have also had regard to the precautionary principle in coming to this conclusion.

The Croaghonagh Bog SAC [000129] is located adjoining the northeast corner of the lands where the wind farm is proposed. The bulk of this SAC is indicated to be in the catchment of the Mourne river on the EPA's mapping. A small section is indicated in the Eske or Eask catchment. The tree felling proposed in plots 1, 2 and 3 would be located in very close proximity to the SAC. It is difficult to be precise on the exact distance due to the scale and clarity of the plans submitted. It appears to me however that the distance is about 210 metres at the nearest point.

The qualifying interest of the SAC is Blanket bogs [7130]. The conservation objective is to restore the favourable conservation condition of Blanket bogs in Croaghonagh Bog SAC. Drainage from the forested area to be felled is to Many Breen's Burn which also drains part of the bog area and flows towards the north. Having regard to the precautionary principle I consider that a stage 2 appropriate assessment is required to assess in more detail the potential impact on the Croaghonagh Bog SAC taking account of any in-combination effects with the construction phase of the wind farm.

In considering in-combination effects I noted on checking myplan.ie that there have been very few planning permissions granted for development in the near vicinity of the lands in the past 10 years. The closest permission noted (1260135) was for the retention of a garage and store in a house curtilage a short distance to the northeast of the plots closest to the northeast (plots 32 and 33). Permission was also granted for the construction of a new junction of local road 6554 with the N15 and widening and upgrading of the local road (The road to the north of the permitted wind farm where the tree felling is proposed). (case reference 1260036. The permission expired on 7/2/2018). Planning permission was granted for a meteorological mast in the wind farm site for 24 months (ref. 1650585 dated 22/7/2016). Planning permission was also granted for the retention of a meteorological mast for 18 months in the southern part of the wind farm lands (Ref. 1650348 permission dated 17/6/2016) and for the retention of a telecommunications mast on Barnsmore mountain (Ref 1450610). The EIAR refers to a substitute consent granted for works

at a quarry located close to the access road to the north of plots 1, 2 and 3. (The reference for that permission is An Bord Pleanála Ref. 05E-SU 0027. The consent was granted on 4/11/2014. It is stated in the Inspector's report on that case that the quarry is located in the catchment of the Eske river). None of these developments would have in-combination effects with the proposed tree felling. Several permissions have been granted in the vicinity of Lough Eske to the southwest. These are well removed from the wind farm site and there would not be any in-combination effects. I also consider that there would not be any in-combination effects with other wind farms in the wider area referred to in the EIAR and An Bord Pleanála Inspector's report on the wind farm (Ref 300460)

The stage 1 screening carried out above concludes that the tree felling now in question of itself on in combination with other projects, which I consider relevant to in-combination effects with the current proposed tree felling and replanting i.e. other required tree felling and construction works for the permitted wind farm (An Bord Pleanála case ref. 300460) would not be likely to have a significant effect on 14 of the Natura sites considered. I consider that the other 3 sites should be screened in for stage 2 appropriate assessment.

Appropriate Assessment (Stage 2 assessment):

I note that Irish legislation generally requires that where appropriate assessment is to be carried out by a consent or competent authority a Natura Impact Statement (NIS) is required from the applicant. I note however that the EU Habitats Directive does not contain a requirement that any specified information must be submitted by the applicant. (The Directive differs from the EIA Directive in this regard). I consider accordingly that a stage 2 appropriate assessment may be carried out in compliance with the EU Habitats Directive provided adequate information is available from the documentation relating to the application and publicly available sources. It also appears to me that Article 19 of the Forestry Regulations 2017 (S.I. No 191 of 2017 as amended by S.I. No. 31 of 2020) now allows the Minister to carry out a stage 2 appropriate assessment without the need to seek a NIS in a situation where adequate information is available from other sources. In the current case I consider that adequate information is available having regard to the fact that the tree felling proposed is part of the preliminary ground preparation work for the wind farm which has been permitted by An Bord Pleanála.

The stage 1 screening has identified 3 Natura 2000 sites for which a stage 2 appropriate assessment is required. The first element of this assessment is to establish if the tree felling of itself or in-combination with any other project or plan would adversely affect the integrity of the site concerned.

The 3 sites requiring stage 2 appropriate assessment are the River Finn SAC in the Republic, the River Foyle and Tributaries SAC in Northern Ireland and the Croaghonagh Bog SAC in the Republic.

The first 2 sites can be taken together as indicated above due to similar circumstances and their qualifying interests. There is also some overlap of the sites as the Mourne Beg River, which is part of both sites, forms the boundary between the 2 jurisdictions.

The tree felling proposed at the northeast corner of the lands i.e. plots 30 to 35 would be located over 1 kilometre from the 2 Natura sites in question. Construction

works on the development involving excavations etc for the turbines nearest the SAC would be located approximately a similar distance from the 2 SACs. There is an area of blanket peat between the nearest works and the SACs in question. Some of the turbines further to the south would be located closer to a stream flowing towards the north, into the SACs. The EIAR submitted with the application for the wind farm indicated that no major infrastructural components of the wind farm would be located within 50 metres of any stream and a buffer zone of 50 metres from the main streams would generally be maintained during construction. (Chapter 6 of EIAR on Flora and Fauna and chapter 9 on Hydrology and Hydrogeology and also referred to in the fisheries assessment which forms Appendix 6.3 of the EIAR) and that various mitigation measures e.g. silt traps, sedimentation ponds and compliance with a Construction and Environmental Management Plan (Appendix 4.4 of EIAR) would be incorporated into the drainage system to prevent water pollution through soil or sediments entering the main streams. (Condition No. 7 of the planning permission for the wind farm requires that the developer shall ensure that all construction methods and environmental mitigation measures, including operation monitoring requirements, as set out in the environmental impact assessment report and the CEMP (Appendix 4.4) and associated documentation, are implemented in full). The tree felling proposed, as conditioned in the licence, would also have to comply with various standards and requirements in order to prevent silt being carried to nearby streams and to avoid water pollution.

Any likely effect from the tree felling and re-planting and any likely in-combination effects with the construction of the wind farm on the SACs in question, would in my opinion arise from the possible transmission of sediment or soil to the watercourses and hence to the SAC. In this regard I consider that the only qualifying interest with a possibility of impact is salmon. I consider that salmon would be the most susceptible receptor for impact of the interests listed previously. I note that in the fisheries surveys carried out for the EIAR Salmon was not recorded in any of the on-site streams surveyed although Trout were present. The fisheries assessment indicates that this is believed to be a function of fish distribution rather any limiting habitat factors. I am in agreement with the conclusion in relation to the site preparation and construction phase of the development, set out in the fisheries assessment to the effect that with the recommended mitigation measures in place the residual impacts from the release of pollutants will be Neutral. The tree felling would have no long-term effect on the use of the lands by otter although it is indicated that in the survey work for the EIAR no evidence of existing use of the lands by otters was discovered.

The southern end of the project lands drains towards the upper end of the Glendergan River which flows south-eastwards to join the Derg River to the northeast on LoughDerg. The Glendergan River is also part of the River Foyle and Tributaries SAC in Northern Ireland. The nearest tree felling now proposed (plots 69-72) would be a little over 200 metres from the SAC in question. My assessment of impact here is similar to that set out in the previous paragraphs.

In assessing the impact of the tree felling and any in-combination effects with other developments I would point out that the entire area of tree felling and re-planting now proposed is relatively small at 11.10 hectares. The tree felling is also spread out over a very wide area and is not concentrated near any of the nearby Natura sites. The EIAR for the wind farm indicates the site for the development was 990 hectares. The areas close to the turbines along the eastern and southern ends of the wind farm is

also small and set in a wide area with no concentration close to any point of the nearby SACs. This further reduces any possible effects on the Natura sites.

Subject to compliance with the various mitigation measures referred to above and having regard to the qualifying interests and conservation objectives I consider that the tree felling proposed of itself or in combination with other adjacent tree felling already licenced, and the permitted wind farm on the overall lands would not adversely affect the integrity of the Finn River or the River Foyle and Tributaries SACs. In the event of the tree felling and re-planting being carried out as a stand-alone project I consider that compliance with the conditions set out in the licence would be adequate to avoid any adverse effects on the integrity of the Natura sites in question.

Croaghonagh Bog SAC is located to the northwest of project lands and to the south of Lough Mourne which is a reservoir for a regional water supply scheme. (It appears that there are also plans to pump water from the Bunadaowen River to the lake to augment the supply) The Mourne Beg River drains from the lake towards the east and ultimately discharges to the sea at Lough Foyle as set out in detail earlier in this report.

The bulk of the SAC is located on the northeast side of Mary Breen's Burn with only a small proportion located to the south east of the burn or stream. The stream would intercept any surface water flows from the south. Plots 1, 2 and 3, of the felling area, are located close to the southern boundary of the SAC. I estimate that the plots are at the closest point about 210 metres from the SAC. The 3 plots in question comprise a total area of less than 1 hectare (.928 Ha). These plots are the only proposed felling areas, in the current application, draining towards Mary Breen's Burn.

The tree felling proposed in this case appears to be to facilitate a temporary construction compound or the construction of the substation for the wind farm (or both facilities). Having regard to the distance of the tree felling from the SAC and to the drainage mitigation measures referred to earlier in this report I consider that the tree felling proposed would not have any significant effect on the water (ground or surface) regime in the protected bog to the north. There is adequate space available south of the SAC and north of the tree felling to provide any necessary mitigation measure such as those set out in the EIAR (Chapter 9), in the Construction Environment Management Plan referred to in the conditions attached to the planning permission and the requirements of the licence as approved by the Department. In the event of the tree felling and re-planting being carried out as a stand-alone project I consider that compliance with the conditions set out in the licence would be adequate to avoid any adverse effects on the integrity of the Natura site in question.

Subject to compliance with the various mitigation measures referred to above and having regard to the qualifying interests and conservation objectives I consider that the tree felling proposed of itself or in combination with other adjacent tree felling already licenced and the permitted wind farm on the overall lands would not adversely affect the integrity of the Croaghonagh Bog SAC.

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 II contains a class of project specified as "initial afforestation and deforestation for the purpose of conversion to another type of land use". (Class 1 (d) of Annex II). The Irish 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 does not fall within the classes referred to in the Directive, and is similarly not covered by the Irish regulations. De forestation and conversion to another land use is covered in Annex II of the directive. The wind farm proposal for the lands now in question has, however, already been subjected to Environmental Impact Assessment by An Bord Pleanála in its consideration of the planning application.

The site is located in a rural area where the predominant land uses are agriculture and forestry with forestry being predominant locally in the area where the tree felling is proposed. The area is a mountainous/upland one with forestry, bogs, heaths and lakes and bare rock on the steeper upper slopes of Barnsmore, dominating the landscape. There are also a number of wind farms in the area. The high voltage power lines which are located close to the N15 also impact on the scenery and landscape of the area. The area where the permitted wind farm would be constructed is in an area indicated to be either of High Scenic Amenity or of Moderate Scenic Amenity in the current Co. Donegal Development Plan. The eastern part of the lands abutting the Northern Ireland border is generally in the area indicated of Moderate Scenic Amenity. Some small parts of the site of the wind farm and lands near the N15 to the west, including Barnsmore Mountain to the southwest and Lough Mourne to the northwest are in an area indicated as of Especially High Scenic Amenity. The tree felling proposed within a larger coniferous forest would have no significant effect on the landscape of the area. The effects of the wind turbines on the landscape, which are not cumulative effects with the small tree felling now applied for, have been considered and assessed in the planning application for

the wind farm. Other than possible impacts on water quality there are no cumulative effects of significance arising from the tree felling. I consider that the felling and replanting proposed would not have a significant impact on the wider landscape.

The tree felling and re-planting will give rise to some additional traffic and the transport of timber on the roads in the area. Having regard to the size of the felling areas such increase in traffic flows will not be significant. The traffic implications of the wind farm particularly during the construction phase have already been assessed by An Bord Pleanála and there are no significant cumulative effects arising from the current tree felling proposal. I also consider that the tree felling and re-planting proposed, in compliance with the conditions already 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 any significant effect on climate change.

There are no National Monuments or protected structures located in the vicinity of the lands where tree felling and replanting are proposed. The tree felling would accordingly have no impact on such structures. I have commented on the potential effects of the proposal on Natura sites in my AA screening and the subsequent AA assessment and determination. I also do not consider that the coniferous trees to be felled are significant features which significantly support or contribute to bio-diversity or the natural flora or fauna of the area. In the circumstances I do not consider that the felling of the trees and their replacement would have any adverse impact on bio-diversity or on the natural flora or fauna of the area.

The wind farm development which would be facilitated by the tree felling proposed has already been subject to EIA by An Bord Pleanála which is the national body designated to determine applications of strategic importance. In so far as the current application might be regarded as a modification to the development previously permitted and should be screened against class 13 of Annex II of the Directive which refers to any change to a project already approved which may have significant adverse effects on the environment, I would submit that any change involved would be minor from the perspective of environmental effects and would not result in significant adverse effects on the environment. (It was stated in the EIAR for the wind farm that the development would require the permanent felling of 43 hectares of forestry and temporary felling of 30.6 hectares which was to be re-planted with Lodgepole pine as short rotation forestry. The latter appears to be generally at the locations where felling is now proposed (Figure 4.21 of the EIAR). The in - combination assessment prepared by the Department indicates that licences to accommodate the wind farm project have already been granted for 56.40 hectares (TFL 00321819) and 2.59 hectares (TFL 00317919). The total with the current application included would be 70.24 hectares).

I consider that the felling proposed, which involves replanting, 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 permitted projects. (I note that the amended EIA Directive states that the screening procedure should ensure that an environmental impact assessment is only required for projects likely to have

significant effects on the environment). I consider that the possibility of significant effects on the environment can be ruled out in this case on the basis of this preliminary screening.

Overall conclusion:

I conclude that the proposed tree felling and re-planting 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 other than the 3 sites for which an AA assessment and determination has been carried out above, having regard to the reasons for designating the sites and their conservation objectives. My conclusion in relation to the 3 Natura sites for which AA has been carried out is that the tree felling and re-planting would not adversely affect the integrity of the sites concerned subject to compliance with the conditions referred to above.

Padraic Thornton

12/10/2020