



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

23<sup>rd</sup> September 2021

Subject: Appeals FAC 040 and 041/2021 regarding licence CN86359

Dear [REDACTED]

I refer to the appeals to the Forestry Appeals Committee (FAC) in relation to the above licence issued by the Minister for Agriculture, Food and the Marine. The FAC established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001 as amended, has now completed an examination of the facts and evidence provided by all parties to the appeal.

#### **Background and Hearing**

Licence CN86359 for afforestation of 11.22 ha at Meenmore, Co. Sligo was approved by the Department of Agriculture, Food and the Marine (DAFM) on 21<sup>st</sup> January 2021. The approval as issued is for planting on 9.89 ha (balance as Bio area) of which 8.41 ha is for Sitka spruce. A hearing of appeals FAC 040 and FAC 041/2021 was held by a division of the FAC on 16<sup>th</sup> September 2021. The FAC members in attendance at the hearing were Mr. Des Johnson (Chairperson), Mr. Luke Sweetman, and Mr. Seamus Neely. The secretary to the FAC was Mr. Michael Ryan.

#### **Decision**

Having regard to the evidence before it, including the licence application, processing by the DAFM, the grounds of appeal, and all other submissions, the Forestry Appeals Committee (FAC) has decided to set aside and remit the decision of the Minister regarding licence CN86359.

The licence decision in this case pertains to the afforestation of lands on a stated site area of 11.22 ha at Meenmore, Co. Sligo. The proposed species are Sitka spruce (85%) and Broadleaves (15%). The land is described in the Appropriate Assessment screening documentation (contained in the Inspector's Certification on file) as having a soil type underlying the project area that is predominantly podzolic in nature, as having a slope which is predominantly flat to moderate (<15%) and that the project area is crossed by / adjoins an aquatic zone(s). The vegetation type within the project area comprises grass / rush. The project is in the sub basin of the LISREAGH\_010 and the waterbody has a GOOD status assigned to it for the 2013-18 Water Framework Directive assessment period.

The project was referred to Sligo Co. Council and the North West Regional Fisheries. The response from the County Council sets out the importance of ensuring that the project would not have a negative impact on water quality in any nearby surface waters, referenced the protection of public health should the proposal be within the source catchment of a public water supply, set out some general and some specific references to the DAFM's *Environmental Requirements for Afforestation*, requested some increased buffer zones, made a request regarding supervision of the works, set out a request in relation to herbicide use, referenced road setbacks, road drainage, roadside boundaries, and protection of the public road among other matters. The response from Inland Fisheries Ireland pointed out the location of the proposal relative to a tributary of the Owenmore River which it states provides a habitat for trout. It notes that the status of the river is good and is at risk. It references steep slopes towards the river and requests a 20m aquatic buffer zone and also asks that two rows of native trees should be planted outside the buffer. It requests that ground works should not be carried out in saturated conditions and that machinery used should not travel through drains or streams. It also seeks a notification of works two weeks prior to commencement. There were two submissions made to the DAFM by members of the public in relation to the project.

The Inspector's Certification on file (marked third and final) noted that the application was desk and field (13/01/2021) assessed, that the site is not prone to flooding, that it is not acid sensitive, that it is not within a hen harrier zone, that it is not within an NHA, pNHA, SAC, SPA, or National Park, that it is not within a FWPM catchment nor in a Prime Scenic Area as per the County Development Plan. Drainage is said not to be required, and road access is available. The area is said not to adjoin a listed archaeological site or monument, slit planting is proposed, ground preparation is to be by woody weed removal and mounding. Standard stocking will apply, 250 kg of Granulated Rock Phosphate is to be applied and manual herbicide control is to occur in years 0, 1, 2 and 3. The Inspector's certification document shows that there is approximately 7.89% forest cover in the townland, 19.36% forest cover within 5kms, 6.56% forest cover in the underlying waterbody and that this application, together with existing afforestation of 3 years or less within a 500 metre radius, constitutes an area of 30.18 ha. It is also stated that there would be no impact on any Way-Marked Way, no impact on any densely populated area, and that the area is not commonly used by the general public for recreation.

#### **Appropriate Assessment screening**

The DAFM carried out an Appropriate Assessment screening as set out in the Inspector's report on file. It identified thirteen Natura 2000 sites (Bricklieve Mountains and Keishcorran SAC 001656, Callow Bog SAC 000595, Cloonakillina Lough SAC 001899, Cloonshanville Bog SAC 000614, Doocastle Turlough SAC 000492, Flughany Bog SAC 000497, Lough Arrow SAC 001673, Lough Arrow SPA 004050, Lough Gara SPA 004048, River Moy SAC 002298, Templehouse And Cloonacleigha Loughs SAC 000636, Tullaghanrock Bog SAC 002354, and Unshin River SAC 001898) within 15km of the proposal. All thirteen sites are screened out in this screening report and the reasons for the conclusions reached for each site are provided on the file.



### **Appropriate Assessment Screening Determination**

An Appropriate Assessment (AA) Screening Determination report dated 2<sup>nd</sup> December 2020 for Afforestation project CN86359 located at Meenmore, Co. Sligo is to be found on file. It examines the same thirteen Natura 2000 sites as in the screening in the Inspector's Certification report. In reviewing the screening conclusions reached by the District Inspector this report screens in two Natura sites (Templehouse And Cloonacligha Loughs SAC 00063 and Unshin River SAC 001898) for reasons primarily related to the project being hydrologically connected to them through part of the Owenmore River network. The other eleven sites are screened out and the reasons for the conclusions reached for all thirteen are recorded in the report.

### **Appropriate Assessment Report for Afforestation project CN86359**

A report detailing the AA determination made by the Minister in relation to the project and an AA Report for Afforestation project CN86359, both dated 11<sup>th</sup> December 2020, are also to be found on file. The AA Report includes an In-Combination report and statement for the project. The AA Determination made in relation to the project is set out, as are the mitigations (in the form of conditions) to be attached to any licence/approval issued.

### **The Appeals**

There are two appeals made against the issue of the licence. The full grounds of these appeals, including any supporting documentation submitted, are to be found on file and have been fully considered by the FAC.

The grounds of appeal FAC 040/2021 include a submission that the (appellant's) house is at the bottom of the hill and raises concerns that if plot 539 is planted it will increase water running in to the back of the house, a submission that planting plot 539 will block afternoon light to the house and references that there is already planting on 2 sides and this proposal plants the other two, a submission raising impact on mental health, internet and mobile phone service, a submission that no study was done on impact on bats, asks if the site was visited as part of the assessment, and asks not to be swamped on all sides with forest.

The grounds of appeal FAC 041/2021 include a summary of the grounds set out as - landscape / visual impact / enclosure grounds, Impact on Archaeological features, presence of Bat boxes, edge planting and archaeology regarding the protection of an additional piece of road. The appeal, in a typed submission, then goes on to reference An Environmental report submitted, a submission relating to impact on landscape from planting in plot 539, references precedence of FAC leaving open space in proposals, a submission regarding an additional road which it contends is worthy of protection, references the presence of Bat boxes as a requirement of a GLAS plan and submits that a bat survey is needed, submits need for an additional 10 rows of broadleaf planting on house setbacks and references the submission made during the processing of the application and encloses a copy of it. The submission makes points on matters that include enclosure that will occur from the planting, hydrology, archaeological features, and Biodiversity / Operational Map.

### **DAFM Statement to the FAC**

The DAFM provided a statement to the FAC for each of the two appeals. These statements include confirmation regarding the processing of the application and that this was done to the requirements of the law and procedures and sets out the various processing dates. It includes a response to the grounds which includes that the conditions in the licence in relation to ground 1 (in appeal FAC 041/2021 relating to surface water affecting the house from planting of 539) should suffice but states no objection to the FAC varying to add a condition regarding a gravel filled drain. It also references that the bat boxes were noted on the site visit, that it is not known if these are occupied and summarises general protections for bats while setting out that the licence doesn't set those protections aside. It further states that there is no objection to the FAC adding conditions to the licence regarding Bats. It also states that the standard 60 m setbacks as per the Manual (are applied) and that (there are) 10 rows of broadleaf along setback edge. The statement sets out that the DAFM is not required to carry out a phone coverage survey.

### **Consideration by the FAC**

The FAC in the first instance considered if the procedures leading to the making of the decision to grant the licence for the proposed development were consistent with the EIA and Habitats Directives. Regarding Environmental Impact Assessment (EIA) and related matters, the EU EIA Directive sets out in Annex I a list of projects for which EIA is mandatory. Annex II contains a list of projects for which member states must determine through thresholds or on a case by case basis (or both) whether or not EIA is required. The Irish Regulations, in relation to forestry licence applications, require mandatory EIA for applications relating to afforestation involving an area of more than 50 Hectares, the construction of a forest road of a length greater than 2000 metres and any afforestation or forest road below the specified parameters where the Minister considers such development would be likely to have significant effects on the environment. The proposal as described is for the afforestation of 11.22 ha (the approval as issued is for planting on 9.89 ha with the balance as Bio area) and is sub-threshold for the mandatory submission of an EIA report. In this case the FAC found that the DAFM assessed the proposal and considered the application across a range of criteria, including water, designated areas, landscape and cumulative effects, and determined that the project was not required to undergo the EIA process.

The FAC finds that in the course of this Assessment to Determine EIA Requirement that the DAFM recorded at question 12 that the current forest cover in the underlying waterbody was 6.56% and that this is at variance with the comparable figures as quoted in the In-Combination assessment report wherein it is recorded that the forest cover in the underlying waterbody is approximately 46%. The FAC further notes that part of the content of a request for additional information as issued by DAFM on 20/05/2020 stated that *'This proposal will surround a dwelling/small holding on all sides (beside Parcel 244). Over 45% of this townland is already planted with commercial conifers. Approval of this proposal will result in around 80% of the townland planted with commercial conifers'*. The FAC also finds that the answer recorded (in the Assessment to Determine EIA Requirement) to question 6 indicated that the forest cover in the application townland was 7.89%. The FAC concluded that in proceeding to make a Determination regarding the Requirement for an EIA in the absence of a documented reconciliation of the apparent differences in these forest cover percentages, the DAFM made a serious error in the processing of the application in this case as it related to the EIA Directive.



The FAC reviewed the grounds submitted regarding contentions relating to Impact on Archaeological features, the presence of Bat boxes, water runoff, potential impacts on the appellants' houses and the impact on mobile phone/internet coverage arising from the proposal. The FAC concluded that the grounds did not submit convincing evidence that the DAFM had erred in its processing of the application as it related to these grounds. The FAC also noted that the matters raised in the submissions made by the Local Authority and the Inland Fisheries Ireland had largely been taken on board in processing the application.

Regarding AA and related matters, the FAC finds that following an initial screening of the proposal an AA Screening Determination report dated 2nd December 2020 for project CN86359 was carried out which examined the same thirteen Natura 2000 sites as the earlier screening in the Inspector's Certification report. The FAC finds that in reviewing the screening conclusions reached by the District Inspector this report (AASD 02.12.2020) screens in two Natura sites (Templehouse And Cloonacligha Loughs SAC 00063 and Unshin River SAC 001898) for reasons primarily related to being hydrologically connected to the two Natura 2000 sites concerned through part of the Owenmore River network. The other eleven sites are screened out and the reasons for the conclusions reached for all thirteen are recorded in the report. The FAC also finds that a report for project CN86359 which details the AA Determination made by the Minister in relation to the project and an AA Report both dated 11th December 2020, are also to be found on file. The AA Report is found to include an In-Combination report and statement for the project. The AA Determination made in relation to the file is set out, as are the mitigations to be included in the licence which are presented in the form of conditions to be attached to any licence/approval issued.

The FAC examined publicly available information from the NPWS and EPA and identified the same thirteen Natura 2000 sites. The FAC considered that the DAFM had sufficient information in respect of the characteristics of the proposal, the location, and types and characteristics of potential impacts, to determine the likely significant effects of the proposal itself or in combination with other plans and projects on a European site. The FAC considered that the procedures adopted by the DAFM in their assessment are considered acceptable. Based on the information available to it, the FAC is not satisfied that a serious or significant error or series of errors were made in the making of the decision regarding AA in this case and concurs with the conclusions reached.

In considering the appeal in this case the FAC had regard to the record of the decision, the submitted grounds of appeal, and all submissions received, including post appeal correspondence. The FAC is satisfied that a serious or significant error or a series of errors were made in making the decision in relation to licence CN86359. The FAC is therefore setting aside and remitting the decision regarding licence CN86359 to the Minister to carry out and record a new assessment to determine whether the application should be subject to the EIA process under the EU EIA Directive, before a new decision is made.

Yours sincerely,

  
On Behalf of the Forestry Appeals Committee

