



28th November 2022

Subject: Appeal FAC 082/2022 in relation to licence TFL00589120 at Aghadunvane, Kinlough and Cloone, County Leitrim

Dear ,

I refer to the appeal to the Forestry Appeals Committee (FAC) in relation to the above licence granted by the Minister for Agriculture, Food and Marine (MAFM). 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 the parties to the appeal.

Background

A tree felling licence TFL00589120 for 22.23 hectares at Aghadunvane, Kinlough and Cloone, County Leitrim was issued by the DAFM on 5th July 2022.

Hearing

Having regard to the particular circumstances of the appeal, the FAC considered that it was not necessary to conduct an oral hearing in order to properly and fairly determine the appeal. Appeal FAC082/2022 was considered at a meeting of the FAC on the 16th November 2022.

In attendance:

FAC Members: Mr. Seamus Neely (Chairperson), Mr. Derek Daly, Mr. Iain Douglas & Mr. Vincent Upton.
Secretariat to the FAC: Mr Michael Ryan and Vanessa Healy.

Following the notification of the appeal, and circulation of the documentation to the parties relating to same on 23rd September 2002, a further submission was received on the 11th October 2022 from the Applicant. This submission was circulated to the Appellant and DAFM on the 11th October 2022 allowing a period within which any further observation / submission could be made to the FAC. No further submissions were received.

Decision

Having regard to the evidence before it, including the record of the decision, the notice of appeal, and submissions received, the Forestry Appeals Committee (FAC) has decided to set aside and remit the

decision of the Minister for Agriculture, Food and the Marine to grant the licence TFL00589120. The reasons for this decision are set out hereunder.

Background

The licence decisions pertains to an application to the thinning and clear felling across eleven plots covering an overall area of 22.23 hectares in an area immediately to the southeast of the village of Kinlough. The site is irregular in configuration scattered across a farm over three townlands with many of the plots not contiguous and with road frontage and proximity to watercourses. The site has a diverse range of species, Sitka Spruce, Japanese Larch, Norway spruce and broadleaves.

The application was accompanied by mapping including location maps, harvest plans which included a revised harvest plan and associated mapping, and a schedule of thinning and felling. Clarification in relation to silt traps was also submitted (22/03/2022). The application was submitted on the 17/11/2020 as stated on the record and advertised on the 09/12/2020 while the Forestry Licence Viewer records a number of documents as having been published on 01/12/2020. The application was subject to desk and field inspection by the DAFM.

The application was referred to Leitrim County Council on 18/12/2020 and the NPWS on 18/12/2020. Leitrim County Council responded questioning the information provided and access on to the public road and outlined conditions in the event of the licence being granted. The NPWS response indicated no comment and submitted a form with general observations on forestry licencing.

The application was referred to a Department of Agriculture, Food and the Marine (DAFM) Archaeologist which recommends in a report dated 21/12/2021 conditions in relation to a recorded monument adjacent to the lands. The application was also considered by a DAFM Ecologist and who prepared an Ecology Report dated 21/04/2022 that outlines the position in relation to nearby and proximate watercourses and identifies potential impacts and issues as Kinlough Wood proposed National Heritage Area (Site Code: 001415) which is located north of Plot 11. Measures are recommended to address the impacts and issues identified.

An Appropriate Assessment Screening Report & Determination dated 21/04/2022 was also prepared by the Ecologist which identified fourteen Natura sites and twelve, Arroo Mountain SAC IE0001403; Sligo-Leitrim Uplands SPA IE0004187; Donegal Bay SPA IE0004151; Ben Bulbin, Gleniff and Glenade Complex SAC IE0000623; Dunmuckrum Turloughs SAC IE0002303; Bunduff Lough and Machair/Trawalua/Mullaghmore SAC IE0000625; Glenade Lough SAC IE0001919; Lough Gill SAC IE0001976; Durnesh Lough SAC IE0000138; Streedagh Point Dunes SAC IE0001680; Durnesh Lough SPA IE0004145 and Lough Golagh and Breesy Hill SAC IE0002164 were screened out

Two sites were screened in to proceed to Appropriate Assessment, Lough Melvin SAC IE0000428 was screened in due to the hydrological connection between this SAC and the project area, there is potential for deterioration of water quality within the SAC with resultant effects on the aquatic QIs of this

European Site and the Lough Melvin SAC UK0030047 was screened in due to the hydrological connection between this SAC and the project area.

The record includes an Appropriate Assessment Report dated 21/04/2022 which examined the two screened in sites, outlines mitigation measures, and in relation to in-combination concludes that it is deemed that the project, when considered in combination with other plans and projects, will not give rise to any adverse effect on the integrity of the above European Sites. An Appropriate Assessment Determination dated 09/06/2022 is on the record which in section 4 outlines mitigation measures and concludes

The basis for this AA Determination is as follows: Following the full implementation of mitigation measures, no adverse effect on the integrity of Lough Melvin SAC IE0000428 and Lough Melvin SAC UK0030047 will occur, alone or in combination with other plans and projects. Therefore, the Minister for Agriculture, Food & the Marine has determined, pursuant to Regulation 42(16) of the European Communities (Birds and Natural Habitats) Regulations 2011 (as amended) and Regulation 19(5) of the Forestry Regulations 2017 (as amended), based on objective information, that no reasonable scientific doubt remains as to the absence of any adverse effect on the integrity of any European site.

The record includes an Inspector's Certification Report dated 05/07/2022 with Date Inspection Certified: 17/06/2022 recommending approval with conditions.

The decision was to grant the licence and it was issued on the 05/07/2022 subject to conditions including conditions to adhere with the Appropriate Assessment measures, archaeological report and notification of Leitrim County Council.

Appeal

There is one third party appeal and the full Notice of Appeal and grounds have been provided to all parties. In summary the grounds contend that there was a delay in the publication of the licence decision, an error in the publication as only one townland is stated when republished and inadequate public notice. It is submitted that additional information was submitted outside of the public consultation window in relation to a revised Harvest Plan and reference is made to access to the public road and the submission from the County Council. It is suggested that a Senior Inspector had modified the Harvest Plan.

It is submitted that there is inadequate protection of the environment in that existing gaps in hedgerows have not been identified and the Ecology Report was not included in the licence conditions. The grounds challenge the effectiveness of the licence conditions, with specific reference to condition (a) and (h) and submits that they are not adequately reasoned. It is also submitted that the condition in relation to contacting the County Council is not adequately reasoned.

It is submitted that there is no evidence of EIA Screening and that the public cannot determine if the screening was adequately reasoned. It is submitted that EIA screening is required as the project involves

an area of deforestation and reference is made to plot 7. It is submitted that there is no evidence that the planting of the lands was subject to screening for EIA or AA and that the project area is part of a large continuous area of plantation of greater than 50 hectares that were afforested c.1996 and 2001. It is further submitted that the works are modifications to previously consented projects as the restocking will include a different species balance.

It is submitted that there has not been an adequate assessment of the potential impact on species listed in Annex IV of the Habitats Directive, in particular bats and otters; that the Ecology Report does not reference otters and the report was not attached to the licence. It is submitted that the Appropriate Assessment Report appears to be based on a desk inspection only and did not consider submissions from the County Council in relation to access to the public road.

It is submitted that the Harvest Plan is deficient in relation to the AA in relation to the location of specified operational details. It is submitted that the monitoring and maintenance of silt traps should extend beyond the period of operations and that the Forestry and Otter Guidelines need to be implemented as far as possible in advance of issuing an AA Determination. It is submitted that there is a lack of a site survey for the presence of otter and that this is a further lacuna and that the issuing of an AA Determination which indicates phased operations over a 10 year period with no intermediate assessment at the different stages of the project is not consistent with judgements of the European Court and reference is made to case C-164/17 and C-43/10.

It is submitted that the consideration of other plans and projects in-combination with the proposal is inadequate and that no reference to forest road applications is made. It is submitted that the licence is inoperable with reference to plot 5 and a suggested lack of the identification of gaps in hedgerows and a 10 metre exclusion zone at the northern boundary of plot 11 in the Ecology Report and the extraction of timber.

It is submitted that there are inadequate protections for wildlife during the period of breeding and rearing. It is submitted that there is a lack of potential for enforcement as the licence has been issued for 10 years and that the Appellant fails to see how the DAFM can practically monitor/enforce the requirements of the licence over this period. It is submitted that the Harvest Years have no legal basis and are merely indicative. The grounds reference the nature of the appeals process and request an oral hearing.

DAFM Statement

The DAFM provided a response to the grounds of appeal which was provided to the other parties. In summary, the statement provides an overview of the processing of the application and addresses the grounds of appeal. In relation to publishing, it is submitted that there is no legal requirement to publish on the same day and that the licence and application are available to view on the Forestry Licence Viewer. It is submitted that a short delay over a weekend is not unfair or unreasonable. It is submitted that an EIA or AA were not deemed necessary and that the appeal is against a felling licence. It is

submitted that the Appellant makes claims that the felling may have significant effects but supplies no evidence of this.

It is submitted that the licence conditions considered as part of a felling application are widely accepted and that the DAFM stand over them, that the DAFM have a duty to ensure that the licence conditions are met and that providing timings of such operations is not practicable. It is submitted that concerns regarding the forest road network should be directed to the local council. It is submitted that the named Inspector had no connection with the application.

It is submitted that the plots identified in the Council's submission would be brought to the forest road via a specialised forwarder designated to move timber to roadside and that this is a standard practice in harvesting operations and reference is made to the content of the Harvesting Plan. It is submitted that the use of forest roads is not precluded regarding the movement of timber out of plot 11.

It is submitted that it is not a requirement to map existing gaps in hedgerows on harvestings sites and that exclusions zone areas are clearly set out in the AAD mitigations and the Standards for Felling and reforestation. The DAFM submit that the pNHA is not to be accessed as part of the project works and acknowledge that the Ecology Report recommendations were not included with the conditions of the licence. It is submitted that the licence area falls entirely outside the Kinlough Wood pNHA and that there are approximately 30 metres of existing broadleaves that act as a natural buffer between the felling area in plot 11 and the pNHA. It is submitted that the recommendations in the Ecology Report are incorporated into the existing plan as presented as well as existing buffers present on the ground.

The DAFM contend that the licencing conditions are clear and well-reasoned and follow standard operating procedures. It is submitted that the plot 7 falls within a 60 metre setback and that an additional 5 to 8 rows of broadleaves suited to the immediate site are included in the licence conditions to protect visual and residential amenities. In relation to EIA screening, it is submitted that the licence was assessed as a felling licence application. The DAFM also request an oral hearing.

A further response was provided by the Ecologist. It is submitted that it is common practice for Harvest Plans to indicate the use of existing access and that the Standards for Felling and Reforestation state that,

'Where no gaps exist, crossing such features should be in documented crossing points only clearly identified on site maps'

In relation to the Ecology Report, it is submitted that the recommended mitigations should have been attached. In response to the appeal, the suggestion that all potential environmental impacts were not considered is submitted to be unclear and it is stated that the record includes an AA Screening, AA Report, AA Determination alongside the Ecology Report. It is submitted that otter was considered as part of the Appropriate Assessment as it is a qualifying interest related to Lough Melvin and that it was unnecessary to consider the species in the Ecology Report as well. In relation to bats, it is submitted that

the NPWS made no comments, that the proposal does not include optimal roosting or foraging habitat for bats, that in relation commuting existing hedgerows would be maintained as well as other lands outside of the licence area and that there would be no significant fragmentation of bat commuter routes. It is also submitted that any loss of edge habitat would be temporary in nature as the reforested areas will provide edge habitat within a few years.

It is submitted that reference to other submissions from the County Council was excluded due to an oversight and that the Ecologist consults with the District Inspector as required. It is submitted that a revised Harvest Plan was received on 22/03/2022 and formed part of the basis of the AA. It is submitted that this states that fuel/storage/maintenance areas would not be within 50 metres of an aquatic zone and that the AA addresses this matter, it is submitted that the installation of temporary crossings are identified, and that the location of silt traps are indicative and that this is best practices due to natural changes in site and weather at the time of works and that measures are in keeping with DAFM Standards.

It is submitted that the Ecologist considered the most conservative scenario and that the ecological value of the project area itself will not change significantly over the next 10 years. It is submitted that other plans and projects are considered in the AA Screening and AA Report.

It is submitted that measures in relation to the aquatic zone form part of the AA and that the Ecology Report failed to state that the existing access track could be used for access and extraction purposes and that the use of the existing access track will not have a significant effect on the habitats of the pNHA. It is submitted that the Wildlife Acts restrict certain activities with exceptions but that wilful destruction of observed bird nests is not allowed. It is submitted that the proposal is not located in a flood risk area and that the AA includes mitigations.

The Applicant made a submission in response to the appeal and made a second submission describing their farmland and the infrastructure that was in place including a system of roads that were partly funded by the Council. They submit that they got involved in forestry 50 years ago to diversify their farm and had regard to biodiversity in planning and managing their forest. They submitted that they contacted a County Councillor who is associated with the Appellant body and known to them and that the County Councillor had told them they were familiar with the road infrastructure on their land.

This submission was provided to the other parties and no response was received.

Consideration of FAC

The FAC considered in the first instance whether the application should have been addressed in the context of the EU EIA Directive (Directive 2011/92/EU as amended by Directive 2014/52/EU). The FAC considered that 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. Neither afforestation nor deforestation, or a class of development related to the proposal under appeal, 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) and “Any change or extension of projects listed in Annex I or this Annex, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment.” (Class 13 (a) of Annex II). The Irish Forestry Regulations 2017, 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 threshold where the Minister considers such development would be likely to have significant effects on the environment.

The decision before the FAC relates to the thinning/felling of 22.23 ha of managed forest and no change of land use is proposed in the application. The application relates to standard forestry operations in forests which, on the face of the record and as the Applicant has stated, have been managed for a number of decades as part of their efforts to diversify their farm. In reviewing the record, the FAC are satisfied that the felling would take place across a number of stands that form part of a complex of agriculture and forestry land under the management of the Applicant. The grounds contend that a number of plots would be deforested but this is not the case. The application is for tree felling under the Forestry Act 2014 and includes an undertaking to replant the land in most plots so that it will remain in forest. The application did not seek to undertake deforestation but stated that the reforestation objective in relation to plot 1, 5, 7 would be for “Bio” with reference to the Felling and Reforestation Policy (2017). The Harvest Plan states that *Plots 1, 5 & Plot 7 to be treated according to the 'BIO' Reforestation Objective (Felling & Reforestation Policy, 2017), incorporating broadleaves retained during harvesting.*

There is no reason to believe that these areas are to be employed for another form of land use, and have not been described in the application as such, rather they will form areas or trees and open areas within and at the edges of the other plots. The definition of forest under the Forestry Act 2014 provides for areas of a forest which are not covered by trees. Open space can be used in managed forest for inspection and management purposes, including regeneration, and are well understood to provide benefits in terms of biodiversity and forest health. In semi-natural and natural forests, open spaces are a key part of the regeneration cycle as well as being important features of forest biodiversity. The Felling and Reforestation Policy (2017) in relation to the BIO Reforestation Objective, states,

This objective applies to situations where the objective is to create a mixture of native woodland and open habitat, predominantly for biodiversity or water protection. This objective involves the creation of woodland cover comprising native broadleaf species and Scots pine, through:

- *planting,*
- *planting supplemented by natural regeneration, or*
- *natural regeneration alone.*

The areas proposed for this management objective are small plots adjacent to an aquatic zone or dwellings and associated buildings. The application does not provide for a change in land use in these

areas and it is clear from the record that these areas will be comprised of a mixture of trees and open space that, as they continue to develop, would continue to meet the definition of forest.

The FAC considers that the suggestion that a change in species mix at the replanting stage, in the context of the specific application, comprises a change in an existing project does not hold any merit. It is clear that the lands are managed forest and will continue as managed forest after the works have been completed. Furthermore, the FAC does not consider that there is any reason to consider that the change in species proposed could be regarded as resulting in significant adverse effects on the environment.

The FAC concluded that this proposal involving the felling of trees, as part of a forestry operation with no change in land use, does not fall within the classes referred to in the EIA Directive, and is not covered by the Forestry Regulations 2017 under which the decision before the FAC was made. The FAC does not consider that screening for significant effects under the EIA Directive was required in this case and is not satisfied that the Minister erred in this matter.

In relation to site notices, as noted in the appeal the Forestry Regulations 2017 require the erection of a site notice for so long as the felling of trees is carried out or timber extraction is ongoing or for such longer periods as the Minister may require and a condition is attached to the licence in relation to this matter. The FAC in considering the appeal is not satisfied that an error occurred in the making of the decision that was made under the Forestry Regulations 2017 and Forestry Act 2014.

In relation to the afforestation of the lands, the Applicant has submitted that they started to plant forests on their farm in the 1970s and this has not been challenged by the Appellant. The FAC understands that the EIA Directive has been amended several times and that the transposition of the Directive into National Law has been undertaken through a number of different Regulations in which the threshold for the mandatory undertaking of an EIA has varied. In relation to the felling licence decision the subject of the appeal, the FAC does not consider that any evidence of deficiency in the planting of the lands has been provided or any reason as to why the planting of the lands could have had a significant effect on the environment. Some of the lands were planted before the EIA Directive came into force. The lands under licence were in agricultural use and lie on the outskirts of Kinlough as part of a private farm. Historic Ordnance Survey maps of the area show that mixed forests have generally formed part of the lands since at least the early decades of the 20th century. A change of land use from agriculture to forestry would have occurred when the land was planted but both forms of land use involve the commercial management of land that share similarities.

The lands lie outside of an area designated for nature conservation while the pNHA lies adjacent to one plot. The lands lie in the Kinlough 10 and Drowes 10 waterbodies, which have been assigned a Good status in the most recent WFD monitoring. There are no recorded monuments on the lands while a cashel is located close to plot 10 this is described as having an established 25 metre setback. The FAC does not consider that there is any convincing evidence that the afforestation of the lands would have

had a significant effect on the environment or should have been subject to an EIA and is not satisfied that the Minister erred in the making of the decision in this regard.

In relation to the appeal period, the Forestry Appeals Committee Regulations 2020 excludes the FAC from considering an appeal that is not received within the period specified in the Regulations which are made by the Minister for Agriculture, Food and the Marine. The Forestry Licence Viewer records that the application was first published on 1st December 2020 and documents continued to be published in 2021 and 2022 including the Appropriate Assessment Report on 21st April 2022. The grounds submit that the application was published in the incorrect location but the Forestry Licence Viewer shows the location of the proposal on an accessible and user friendly map, the published application includes the townlands and maps of the location and the notification published on the DAFM website of the application and decision contain the three townlands. The grounds do not provide any convincing evidence that the Appellant or members of the public were disadvantaged in relation to the publishing of the location of the proposal. The FAC are not satisfied that an error was made in the making of the decision in regard to these grounds of appeal.

The grounds contend that the decision was issued on the 5th July 2022 but the decision was not first made known to the public until the 6th July and was republished on 8th July and the DAFM confirm this in their statement. The Forestry Licence Viewer records the decision as being published on 5th July 2022 while the decision was also published separately on the DAFM website. On the face of the record the decision was published on the Forestry Licence Viewer on the same date that it issued and the appeal does not provide any evidence to contradict this. The decision appears to have been republished on 8th July. In any case the FAC does not consider that the delay, were it to occur, could be necessarily considered to be unreasonable particularly as the application and related documentation, including the Appropriate Assessment Report, had been published for a number of months before the decision was made.

In relation to the Ecology Report, the position of the Minister is somewhat contradictory. On the one hand the Ecologist submitted that the Report should have been attached as a condition while the Inspector appears to suggest that a buffer of broadleaf trees is in place already. Furthermore, the Ecologist noted that some of the measures did not mean to exclude the accessing of the lands in the exclusion of operations but that this might be interpreted from the Report. The FAC noted that one of the measures was,

The pNHA is not be accessed as part of project works.

The Harvest Plan submitted shows access to plot 11 to be through an existing track that runs through the pNHA. It is not clear whether an alternative access exists or if the DAFM sought clarity on this matter. The statement appears to acknowledge that the measure is unclear. The application does not propose to undertake any felling in the pNHA and the Applicant has described how they have considered the woodland in their management practices. The FAC does not consider that there is any evidence before it that would suggest that using this established access would have any impact on the

pNHA and it may have been understood by the DAFM that this measure related to the woodlands themselves rather than the track but the Ecology Report would appear to contradict the proposal and lacks clarity as to what specific requirements must be met. While the FAC noted that this is a proposed NHA it also considered the matters that the Minister is required to have regard to in making decisions and the content of the statement. The FAC is satisfied that a significant error was made in the making of the decision in not attaching the Ecology Report as a condition or in recording a reason based on the details of the site as to why the Report was not required to be attached. Furthermore, should the Minister consider it necessary to attach the Ecology Report, the report itself must be undertaken again to address the operations as proposed on the application including the use of the specified access routes.

Regarding access to the public road, it is clear from the application that the forests lie across privately owned farmland with an existing network of roads, a yard and access to the public road. The route to the public road through an existing farmyard is clearly marked on the original and revised Harvest Plans. There is no evidence that the plots cannot be accessed across the Applicants land. The Applicant submitted that they had contacted the Appellant's Director and that the Director had stated to them that he was aware of all of the appropriate infrastructure. The Appellant provided no response to this. The management of the public road is a matter for the local authority and it was the local authority that requested notification be made to it which was subsequently attached to the licence conditions.

The grounds allege that there have been modifications of the Harvest Plan by a named person who they suggest may be a "senior Inspector with the Forest Service". The grounds provide no evidence of any modifications by this person or that the application was made by anyone other than the named applicant and their agents. The FAC found no basis for this claim.

The FAC considered the grounds that related to Appropriate Assessment. The EU Habitats Directive requires that any plan or project not directly connected with or necessary to the management of a European site but likely to have a significant effect on it, either individually or in combination with other plans or projects, must be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. Furthermore, the competent authority can only agree to the plan or project after having ascertained that it will not adversely affect the integrity of the site concerned. Part 8 of the Forestry Regulations 2017 require the Minister to screen and to undertake an Appropriate Assessment in relation to specific applications.

The FAC examined the record and statement from the DAFM and considered that the DAFM had sufficient information available to it to inform the decision making process in this case and that the information as uploaded to the Forestry Licence Viewer was sufficient to inform the general public as to the content of the application and furthermore that the said information as uploaded to the Forestry Licence Viewer was sufficient to enable analysis, including GIS analysis, to determine if lacunae existed in the process. The Harvest Plan includes the identification of existing tracks and roads, including the crossing point on the aquatic zone, relevant to the application and a stacking area at the existing yard. The FAC considers that it is in keeping with good practice to provide some discretion for the operators to

choose the location of silt traps to reflect the specific localised circumstances and that the conditions on the licence include criteria that must be met in locating silt traps that can be relied upon in the specification of the licence. Hedgerows are marked on the maps and must be retained.

The DAFM recorded an Appropriate Assessment Screening Report & Determination dated the 21/04/2022 which identifies and examines 14 European sites and twelve, Arroo Mountain SAC IE0001403; Sligo-Leitrim Uplands SPA IE0004187; Donegal Bay SPA IE0004151; Ben Bulbin, Gleniff and Glenade Complex SAC IE0000623; Dunmuckrum Turloughs SAC IE0002303; Bunduff Lough and Machair/Trawalua/Mullaghmore SAC IE0000625; Glenade Lough SAC IE0001919; Lough Gill SAC IE0001976; Durnesh Lough SAC IE0000138; Streedagh Point Dunes SAC IE0001680; Durnesh Lough SPA IE0004145 and Lough Golagh and Breesy Hill SAC IE0002164 were screened out and reasons are provided.

Two sites were screened in. Lough Melvin SAC IE0000428 was screened in due to the hydrological connection between this SAC and the project area with reference to potential for deterioration of water quality within the SAC with resultant effects on the aquatic QIs of this European Site and the Lough Melvin SAC UK0030047 was screened in due to the hydrological connection between this SAC and the project area. Other plans and projects are recorded which were considered in-combination with the proposal.

In considering other plans and projects the DAFM recorded the following in the screening, *It is concluded that there is no likelihood of the proposed thinning, clearfelling and reforestation project TFL00589120 itself, i.e. individually, having a significant effect on certain European Sites and associated Qualifying Interests / Special Conservation Interests and Conservation Objectives, as listed in the main body of this report. In light of that conclusion, there is no potential for the proposed project to contribute to any significant effect on those same European Sites, when considered in-combination with other plans and project.*

The FAC considered this to be an error as it suggests that the DAFM did not consider effects that might arise from the project which were not significant in themselves but which in-combination with other plans and projects might result in a significant effect.

In relation to the Appropriate Assessment undertaken the DAFM record the following, *It is concluded that there is no possibility that the proposed thinning, clearfelling and reforestation project TFL00589120, with mitigation measures set out in Section 4, will itself, i.e. individually, give rise to an adverse effect on the integrity of the following European Sites and their associated Qualifying Interests and Conservation Objectives: Lough Melvin SAC IE0000428 and Lough Melvin SAC UK0030047. Therefore, there is no potential for the proposed project to contribute to any cumulative adverse effect on the integrity of the above European Sites, when considered in-combination with other plans and projects.*

The FAC would understand that the consideration of other plans and projects should take place as part of the process to ascertain whether the project, either individually or in-combination with other plans or

projects, is likely to have a significant effect on a European site and in the Appropriate Assessment of the implications of the project and such effects on the European site, having regard to the conservation objectives of the site concerned. As stated on the record, it appears to the FAC that other plans and projects were only considered in this Appropriate Assessment after a conclusion had been made that the project itself would not have an adverse effect on the integrity of the site concerned which the FAC would consider to not be in keeping with the requirements of the Forestry Regulations 2017 and Article 6(3) of the EU Habitats Directive.

The Ecologist has submitted that they adopted a precautionary approach in this case. The FAC would agree that proceeding to Appropriate Assessment (AA) in this case represented a precautionary approach given the scale and nature of the proposal in particular given that not all plots have a pathway to the SAC and the operations would be limited in scale and period. In relation to the otter species, the operations occur outside of the SAC and it is recorded that effects might occur as a result of potential impacts on water quality and disturbance. It is not recorded that the lands might be suitable habitat themselves for otter and as they comprise semi-mature plantation forest the FAC considers this to be reasonable. The grounds provide no factual evidence to contradict the AA undertaken. The measures include specified setbacks and restrictions on operations in relation to water quality and disturbance.

In relation to the submitted grounds of appeal that the licence conditions do not provide a system of protection for wild birds during the period of breeding and rearing consistent with Article 5 of the Birds Directive and relating to the requirements of Article 12 of the Habitats Directive, the FAC would understand that the granting of a felling licence does not exempt the holder from meeting any legal requirements set out in any other statute. The FAC noted that the appellant did not submit any specific details in relation to bird nesting or rearing or animals on the proposed site. The Ecologist addresses these issues in detail in relation to the appeal with reference to the specific measures imposed in relation to otter and bats including in relation to the retention of hedgerows and the nature of the operations. In particular, the FAC noted that the proposal is for the felling and replanting of a semi-mature and mature plantation forest.

In relation to licence conditions, the FAC consider it to be common practice that licensees and their agents be required to follow good practices standards as a condition of a licence. The operations would occur across two interventions which would be limited in scope and time and there are extensive measures to address the protection of water quality. The application Harvest Plan includes a number of operational measures to protect water quality including,

- *Native alluvial woodland species are to be replanted adjacent setbacks from aquatic zones and relevant watercourses i.e. forest drains. This is to be done rapidly post harvesting and there is to be no fertiliser or pesticide application in these plots post planting.*
- *During reforestations, apply a 5-metre wide water setback to relevant watercourse, as defined in the Environmental Requirements for Afforestation. Such setbacks are to be applied as specified in those Requirements (see Tables 5 & 6 therein, primarily). See attached maps for setbacks outlined*

- *Reforestation to be undertaken in the first planting season after harvesting to ensure speedy greening up of the project area. No cultivation in the broadleaves area, or inverted mounds only to be used. Silt fences are to be placed in the internal agricultural drains acting as relevant watercourses, every 50 metres. Silt curtains are to be used on the riparian boundaries.*

Having regard to the nature, scale and location of the works as licenced, the FAC consider that the measures specified as conditions on the licence, including the AA, are sufficient to ensure that the Good status of the waterbodies would be protected and not decline and that the long-term outcome may well improve given the measures that would be implemented as part of the proposal.

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. The FAC concluded that a serious or significant error or series of errors were made in the making of the decision in respect of licence TFL00589120. The FAC is therefore setting aside and remitting the decision regarding licence TFL00589120 to the Minister to reconsider the Ecology Report in this instance to ensure that the measures reflect the operations as proposed or are clear in stating the restrictions that might be considered necessary and carry out a new screening and Appropriate Assessment of the proposal itself and in combination with other plans or projects before a new decision is made.

Yours sincerely,



Derek Daly, On Behalf of the Forestry Appeals Committee

