



18th July 2022

Subject: Appeal FAC 149/2021 regarding licence CN83195

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 the Marine. The FAC established in accordance with Section 14 A of the Agriculture Appeals Act 2001 ("The Act"), as amended, has now completed an examination of the facts and evidence provided by all parties to the appeal.

Background

Licence CN83195 for a forest road of 410m at Lissyvurriheen, Co. Clare, was issued by the Minister for Agriculture, Food and the Marine (DAFM) on 9th of December 2021.

Hearing

An oral hearing of appeal FAC 149/2021, of which all parties were notified, was held remotely by a division of the FAC on 20th April 2022.

In Attendance at Oral Hearing:

Department Representative(s):	Ms. Lisa Chigara, Ms. Mary Coogan and Mr. Kevin Keary
Appellants:	
Applicant / Representative(s):	
FAC Members:	Mr. John Evans (Deputy Chairperson of the FAC), Mr. Vincent Upton, Mr. Iain Douglas
Secretary to the FAC:	Mr. Michael Ryan.

Decision

Having regard to the evidence before it, including the licence application, the processing of the application by the DAFM, the notice of appeal, submissions received, including those at the oral hearing and, in particular, the following considerations, the FAC has decided to set aside and remit the decision of the Minister for Agriculture, Food and the Marine regarding licence CN83195.

Background

The Application

The decision relates to the granting of a licence for a forest road of 410m at Lissyvurriheen, Co. Clare. The area of forest to be served by the road is 19.53ha, with a current stock of Sitka Spruce (75%), Japanese Larch (15%) and additional broadleaf trees (10%) planted in 2003. Information on the application is available on a public file accessible via the Forest Server web viewer and the appeal parties were notified of this. The Appropriate Assessment Screening Report (AAS) on the public file, describes the project as:

This project comprises 410 metres of forest road works. The predominant soil type underlining the project area is predominantly podzols in nature. The slope is predominantly steep (15% to 30%). The project area is crossed by / adjoins an aquatic zone(s). The vegetation type(s) within the project area comprise coniferous high forest and an existing track.

Documents associated with the application, received by DAFM on the 30th of January 2019, are to be found on the public file. These include a harvest roadmap, photos of a site notice in situ, road construction specifications for two road segments, a management plan for the forest to be serviced, forest road required information, an aerial image of the site, a species map and a bio map. The maps of the forest indicate a corridor in the forest to be served for the accommodation of electricity power lines. Two watercourses are marked on the bio-map. One of these flows through the site, while another is on the forest boundary to the north. These maps show the location of the proposed forest road to be some distance from the public road, with access to be achieved by means of a private road.

Also on file are a number of requests for further information issued by DAFM and responded to by the applicant. A pre-approval Request for Supporting Documentation was issued to the applicant for further information on the road design on the basis that the "build on top" method outlined in the original application documentation was not adequate for a road crossing a stream. Reference is also made to the need for Freshwater Pearl Mussel (FPM) mitigation measures, and the applicant is requested for measures to address unspecified concerns expressed in relation to the proximity of the haulage route to a dwelling. This request was responded to by the applicant's forester on the 12th of March. The response included FPM forms/harvest map detailing road construction method. A FPM site assessment is included with mitigations, noting that the FPM "stream runs directly north of site". The harvest map shows the locations of silt traps. A road specification is provided, marked "revised" (though dated the same as provided in the original application). This has "heavy clay" substituted for the "build on top" on the previous version. There are also references to the queries raised by the member of the public stating that:

- The road has been in existence since the forest was established.
- Two dwelling houses are marked on the map
- A site specific method will be prepared, consultation will take place with neighbours especially where sharing rights of way, and that contractors will work at reasonable times e.g. Mon to Sat 8am to 6pm.

A further pre-approval Request for Supporting Documentation was issued by DAFM to the applicant on the 19th of June 2019. This outlines errors on the forms previously provided detailing the proposed FPM mitigations measures and highlights that in addition to felling the proposed operations also involve road building. It also highlights that the peat depth is given as between 200 to 600mm, with some of the site being mineral, and that a "dig to solid" method can be used on peat depth to ca. 1m. It also highlights absence of specifications for the aquatic zone crossing. A response to this request was received on the 20th of June 2019. This again provides a revised road specification (again with the same date), to state that construction type will be as advised by Inspector and construction type given as "excavate". An unchanged harvest map is provided. A revised (though dated the same as the previous version) FPM site assessment is provided, with operation revised to "Road construction and tree felling" and some elements of the FPM assessment clarified as "Not applicable to thinning". A series of bullets are also included on a separate sheet as noting follows:

- *A watercourse traverses the site in an East - West direction.*
- *It will be necessary to cross this watercourse to service the forest correctly, ensuring the value of the standing timber will not be compromised.*
- *Understandly (sic), road construction can be invasive work as can temporarily disturb ground and have potential negative impact on nearby watercourse.*
- *We will adhere to good forest practise when crossing the watercourse.*
- *Adequately sized pipes will be used to ensure water flow is not Impeded in any way. Recommendations for pipe dimensions (cross section diameter) will be welcomed from the forest service and other concerned groups.*
- *Watercourse flows East - West. A geotextile silt trap/straw bales will be placed downstream (West) of the water crossing, which will prevent sediment flowing further downstream. Sediment will be limited as the machine operator will be instructed to maintain the integrity of vegetated open space area along the bank of the watercourse. Excavator will keep back the full reach of the machine, and operate at this distance, thus protecting the vegetated area.*
- *The construction of the road will be managed by forester.*
- *The district inspector will be consulted throughout construction if necessary.*
- *The map provided should be suffice as it outlines location of water crossing, vegetated area to north and south that will be maintained by ensuring machinery carry out work al full reach of the machine arm. Location of silt traps/collection points downstream of location of crossing.*

A final pre-approval Request for Supporting Documentation was issued to the applicant on the 12th of August 2019. This required details of the specification of the stream crossing, indicating this is a matter for registered forester to provide. A response was received on the 5th of September with the bullets above revised to state that a 450mm pipe will be used to ensure water flow is not impeded in any way.

Also on the public file, dated the 12th of August 2019 is a printout of land registry folio details. The relevant Registry maps are not provided, and ownership details are redacted on file. A right of way is highlighted, dated the 7th of July 2021.

Submissions and referrals

A submission from a member of the public, in the form of a series of emails to DAFM is to be found on the public file. The details of the submission are largely reflective of the grounds of appeal, and relate to issues concerning the use, suitability and maintenance of a private road, services located under that road, impact of noise and vibration on a private dwelling house, and the currency of maps used in the application.

The proposal was referred to Clare County Council on the 15th of February 2019. A response is on the public file dated the 11th of March 2019. This highlights the presence of FPM in the Cloon water body and the Lower River Shannon 002165 SAC. The letter also highlights requirements of the Water Framework Directive.

Appropriate Assessment

The DAFM assessed the application in line with the requirements of the Habitats and Birds Directives. An in-combination statement is on the public file. This notes searches on a number of planning searches on various systems that took place on the 2nd of September 2021. Searches include the planning systems of Clare County Council (26), An Bord Pleanála (0), the EPA (0), Afforestation (9), Forest Roads (0), Private Felling (9), Coilte Felling (11). The In-Combination statement states that:

This project lies in a rural landscape in Lissyvurriheen, Clare in the River Sub-Basin Cloon (Clare)_020. The River Sub-Basin Cloon (Clare)_020 has approximately 11% forest cover, which is equal to the national average of 11%. At 410 metres the project is considered medium in scale.

The statement concludes that the project individually or in-combination with other plans or projects will not have an effect on any Natura site.

A screening for Appropriate Assessment (AAS) is on the public file dated the 9th of December 2021. This identifies four Natura sites within 15km of the project site as follows:

1. Barrigone SAC 000432
2. Lower River Shannon SAC 002165
3. River Shannon and River Fergus Estuaries SPA 004077
4. Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA 004161

The qualifying/special conversation interests as appropriate are examined for each site, and reference is made to the findings of the in-combination statement. Three of the sites are screened out for the following reasons:

- The location of the project area within a separate water body catchment to that containing the Natura site, with no upstream connection, and the subsequent lack of any hydrological connection (Sites 1 and 4 above).
- The unsuitability of the project area for use by any species listed as a qualifying interest of the Natura site (Sites 1, 3 and 4 above).

One site, the Lower River Shannon SAC 002165, is screened in for Appropriate Assessment on the basis of:

- Direct hydrological connectivity
- The significance of the project area for foraging, breeding, roosting (etc.) by a species listed as a qualifying interest.
- Impact on supporting habitats and / or species.
- Insufficient and / or conflicting information that prevents a sound judgement being reached as to whether or not the possibility of a significant effect arises.

An Appropriate Assessment Report (AAR) is on the public file, dated the 2nd of September 2021. This was prepared by a consultant Ecologist, on behalf of the Minister for Agriculture, Food and the Marine. Contrary to the AAS, this states that two sites have been screened in for Appropriate Assessment, namely:

- Lower River Shannon SAC 002165
- River Shannon and River Fergus Estuaries SPA 004077

The AAR describes the site as follows:

This 410 m proposed forest road is planned to facilitate thinning operations for a 19.53 ha forest. The road is proposed to be built by excavation and is partly located within the forest block, and partly adjacent to grassland/scrub, where it joins an existing track/lane.

A relevant watercourse flows through the Project Area (PA), and across the proposed road route, as shown on the submitted BioMap (Appendix Figure 3) and verified on <http://map.geohive.ie/> (Appendix Figure 7). This creates a hydrological connection to an Aquatic Zone (AZ) ca. 1.5 km downstream. The same AZ flows ca. 110m to the north of the proposed forest road. This AZ created a direct hydrological link to the Lower River Shannon SAC (ca. 2.6 km downstream) and the River Shannon and River Fergus Estuaries SPA (ca. 6.8km downstream). The AZ is part of the CLOON (CLARE)_201 (in good WFD status and not at risk). Freshwater pearl mussel (FPM) is a qualifying interest (QI) feature of the Lower River Shannon SAC, and live validated populations of FPM are present <5 km downstream of the PA. An FPM assessment was undertaken. Otter is also a QI of the aforementioned SAC and freshwater otter habitat has been mapped ca. 2.6 km downstream. Records of Otter were also observed (Appendix Figure 6).

The project area is located on a moderate (0-15%) slope, composed of Lithosols/Regosols (75%), Podzols (Peaty)/Lithosols/Peats (3%) and Blanket Peats (22%) (SIS National Soils).

The AAR then considers each of the qualifying/special conservation interests as appropriate and proposes mitigations as appropriate. These are principally related to the protection of water quality. In the case of the SPA, the special conservation interests are predominantly wetland and waterbirds, sea birds, and the AAR notes that the separation distance is >5km leading to a conclusion that the risk of disturbance is negligible.

An Appropriate Assessment Determination (AAD) is on the public file dated the 2nd of December 2021. This summarises the conclusions of the AAR and specifies conditions to be attached to any licence to provide for the mitigations identified in the AAR. These include conditions relating to the protection of water quality, otter and other aquatic features, and FPM. A number of other Guidelines and Best Practice publications are also referenced.

Assessment to Determine requirement for EIAR

The DAFM also carried out an assessment to determine if the proposed project required an Environmental Impact Assessment Report (EIAR). The public file contains a document entitled Assessment to Determine EIA Requirement dated the 9th of December 2021 and makes reference to a spatial run date of the 8th of December 2021. This contains various questions relating to the project, answered (it appears) by the Forestry Inspector. The final question on this report reads:

EIA: On the basis of this examination should this application be subject to the EIA process?

This question is answered *No*.

Inspectors Certification Report

There is a report titled Inspector's Certification Report on the public file, dated the 9th of December 2021, with a recommendation to approve with conditions.

The Licence

An approval letter issued on the 9th of December 2021, headed "Approval for Forest Road Licence". Various conditions associated with grant schemes (which do not fall within the remit of the Forestry Appeals Committee) are attached and in some instances these are stated to apply to the licence. Additional Silvicultural and Environmental conditions include a condition to adhere to mitigations described in the AAD dated the 2nd of December 2021.

Grounds of appeal and Statement of Fact

There is one third-party appeal against the decision and the full grounds have been provided to the parties and are recorded in the FAC file. The grounds are summarised as follows:

1. That the appellant wrote to the Department of Agriculture Food & Marine (DAFM) on 3 occasions in 2019 expressing various concerns regarding the impact of the proposed development on the appellant's property, and that the appellant is the only resident on the proposed access road which is an unmade private laneway of approximately 2km length, at the end of which is the proposed development. That despite this correspondence, the appellant had no communication from the DAFM or the applicant over a period of 34 months.

2. That the appellant's property includes a residence which was built in the 1960s and which is situated 6 metres from a laneway along which the appellant has a right of way. That there are outbuildings on the other side of the laneway which the appellant accesses several times daily. That there are 4 connections running under the laneway carrying mains electricity, mains water, sewage water and heating oil. That the appellant's property abuts the laneway on 2 sides.
3. That the appellant has four principal concerns.
 - Firstly, that the appellant's underground connections are at grave risk from the type of vehicles that may be crossing over them.
 - Secondly, that the appellant's house being only 6 metres from the laneway will be subject to vibration that may impact on its structural integrity.
 - Thirdly, that there will be considerable impact from noise and other noxious factors passing so close to the appellant's home.
 - Fourthly, that the appellants land either side of the laneway for 600 metres will be impacted by the nature of the traffic passing during this project.
4. That as the only resident along the right of access laneway, the appellant has maintained it in such a way that access is possible at all times of the year, but that the proposed project will degrade the condition of the laneway considerably.
5. That any historic right of way into the development land was established many decades ago as was the laneway itself, that such a right of way would have been for the purpose of pedestrian, bicycle and horse & cart traffic and it never have been envisaged that there would be such activity and vehicles of such a size and frequency passing along it. That, in the appellant's opinion, the proposed development will require a considerable change of use of this right of way and that it is questionable as to whether the laneway is wide enough or capable of withstanding the likely usage required for the construction of a forest road, that there is one significant U-bend which will be extremely difficult for large or articulated vehicles to navigate.
6. That the appellant lives alone at the residence in proximity to the laneway, and that this proposed development will have potential consequences to the appellant's overall health, property, and environment.
7. That the appellant seeks to have the decision varied to establish if the laneway is indeed capable of withstanding such usage and to indemnify the appellant for any consequential damages to their property and the laneway if the project does go ahead.

The appeal is supported by several photographs and maps which are referred to in the grounds of appeal.

In response to the appeal, the DAFM provided the FAC with a Statement of Fact (SoF). The SoF includes confirmation of the administrative aspects of the processing of the application as outlined above, and dated the 19th of January 2020. This notes that the site was field assessed on the 11th of June 2019. The

SoF also includes a statement from the Forestry Inspector dated the 5th of May 2022. In this, the Inspector makes the following comments:

- 1. The site was inspected on the 11/06/2019. Following my inspection, I queried various aspects of the proposal specifically the depth of stone and the aquatic zone crossing.*
- 2. I was aware of the submission on file from the individual who owns the dwelling nearby. However, I felt that a rigid truck would be able to negotiate the sharp turn approaching the forest, before the dwelling in question.*
- 3. At no point during my assessment of the application was I aware of the existence of any sewerage or water pipes transecting the road from the dwelling to the outbuildings.*
- 4. I believed the distance from the dwelling to the road was sufficient and the presence of a hedgerow would mitigate any adverse impacts that may arise due to the imposition of timber trucks traveling up and down the road, albeit at very infrequent intervals (every 3 or 4 years for harvesting operations).*
- 5. Since there are utility pipes under the road, I recommend that the applicant / their agent investigate this matter, they may have to consult with the submitter to locate these and that they subsequently assess the situation. Furthermore an alternative approach to the forest be investigated, for example to cross the field south of the dwelling.*
- 6. The portion of the approach road that is not included in the licence application will suffer wear and tear during harvesting and road construction operations. Guarantees regarding its maintenance should also be made by the applicant, in the interest of neighbourly cooperation.*

Following distribution of the SoF to the parties to the appeal, the appellant wrote to the FAC re-iterating a number of grounds of appeal, disputing the feasibility of construction and other traffic passing the sharp turn referenced by the Inspector, and stating that the applicant's obligations extended beyond neighbourly cooperation to a duty of care.

Oral Hearing

At the Oral Hearing, which was held remotely, the deputy chair noted that the grounds of appeal substantially related to issues relating to access to, and use of, a private road. The deputy chair observed that such matters do not generally fall within the remit of the FAC as they represent a civil law matter between the parties. As a result, the focus of the hearing would substantially relate to the processing of the application.

The DAFM confirmed the details provided in the Statement of Fact, and the District Inspector confirmed that he was unaware of the services underneath the private road at the time of his site visit. The District Inspector stated that this private road was likely to be subject to some wear and tear as a result of harvesting operations, but that these would not be substantial, though he did have concerns in relation to the services mentioned in the appeal. The Inspector also stated that while there was a sharp turn that may pose some difficulty for larger vehicles, he formed the view that access to the site would be possible

via the private road. The Inspector stated that had he been aware of the services he would have been unlikely to certify the application without seeking further information from the applicant.

In response to questions from the FAC, representatives from DAFM confirmed that the specifics of the submission made by the appellant during the licence process, in which his concerns including those relating to the services, were not brought to the attention of the applicant during the licencing process.

The Committee also queried the nature of a number of the documents on the public file which can be accessed via the Forest Service Public Viewer. The DAFM confirmed that some of these documents, such as the Inspector's Certification, the Assessment to Determine EIA requirement, and the screening for Appropriate Assessment, were generated from an IT system and that the date given on those documents (the 9th of December 2021) was not necessarily the date on which those steps in the licensing process took place.

The Committee drew the Inspector's attention to a number of questions in the document entitled Assessment to Determine EIA Requirement.

In relation to the question "*What is the approximate % of forest cover currently in the underlying waterbody (or waterbodies)?*", the Committee observed that this is answered as 13.16 which is at variance with the figure quoted in the in-combination statement (11%). The Inspector acknowledged the difference, and noted that while these calculations were performed centrally by the DAFM Forest Service and in some instances differences arose as a result of differences in timing, that in the context of the waterbody in question this represented a significant difference which could not be explained.

In relation to the question "*Based on the extent of forest cover as outlined above, and the existing forest road network (if any), is the cumulative effect of this proposal likely to have a significant impact? If 'Yes', describe in the Inspectors comments box below.)?*", members of the Committee observed that this is answered as Yes, with no details provided in the comment box. The Inspector expressed the view that this answer was provided in error, and should be a No.

In relation to the question, "*Are there populations of Freshwater Pearl Mussel likely to be effected by the proposed forest road?*", the committee observed note that this is answered as Yes, but that the report gave no details of the mitigations that were relied on as a basis for not carrying out an EIAR. The Inspector expressed the view that this was detailed in correspondence provided by the applicant.

In relation to the question "*Have any issues raised with the Forest Service by the general public and / or by non-government organisations been examined and considered?*", the Inspector agreed with the Committee that the issue relating to services under the road had been raised in a public submission, but that this information had not been considered at the time of the determination for EIA requirements.

In response to questions from the Committee, the Appellant confirmed that he had made the submission, previously described as being from a member of the public, (which is redacted on the public file) which highlights concerns in relation to the private road. The appellant further confirmed that he was the owner

of lands through which the private road crosses. When asked if he was aware of any registered right of way over those lands to the proposed development other than a right of way to lands to the north of his house, the Appellant stated that he was unfamiliar with any recorded rights of way, and that the private road had historically been associated with access to two now derelict dwelling houses to the east and north east of his house, one of which is in the forest to be serviced by the proposed forest road. The Appellant further restated his statement in his grounds of appeal that he was willing to consent to the use of the private road, but desired reassurances as to its upkeep, and indemnification in the event of damage to his house, services, or outbuildings.

Considerations of the FAC

In considering the appeal, the Committee had regard to the record of the decision as provided on the Forest Service web viewer; and the details of the appeal itself.

Before considering the grounds of appeal themselves, the Committee considered the processing of the licence, with reference to national and European law. Regarding Environmental Impact Assessment (EIA) and related matters in the grounds, the EU EIA Directive sets out in Annex II a list of projects for which member states must determine through thresholds or on a case by case basis (or both) whether or not an Environmental Impact Assessment Report (EIAR) is required. 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. At 410m, the proposed project is significantly below the threshold for mandatory EIA. In this instance there is a record of an *Assessment to Determine EIA Requirement*, in reference to the requirements of a sub-threshold development. This is dated the 9th of December 2021, though this was stated at the oral hearing to not be the date on which the assessment took place. In this the proposal is considered across several criteria including the Project Description, Cumulative effect and extent of project, Water, Soil, terrain, slope and other factors. As noted in the Oral Hearing, there are inconsistencies in a number of the answers recorded in this document. In particular:

1. The approximate forest cover in the underlying waterbody is recorded as 13.16% which is at variance the figure quoted in the in-combination statement (11%) produced as part of the Appropriate Assessment process. The waterbody in question is not specified in the *Assessment to Determine EIA Requirement*. As recorded in the AAR, the catchment contains aquatic species that are highly sensitive to changes in water quality and there is a direct hydrological pathway from the proposal to waterbodies. In the opinion of the Committee this represents a significant and unexplained difference.
2. Based on the submissions at the oral hearing, it is evident that the inspector had not been made aware of the detail of issues relating to the services under the private road which had been raised

in a submission made by the appellant. As a result, the "Yes" in answer to the question on the document "*Have any issues raised with the Forest Service by the general public and / or by non-government organisations been examined and considered*" was in error.

3. There is a direct hydrological connection from the project site to a population of FPM, and this is acknowledged in the *Assessment to Determine EIA Requirement*. The FPM is a qualifying interest in a European site, and so negative impacts must be considered as part of the screening. The *Assessment to Determine EIA Requirement* concludes that no EIAR is required. No basis for reaching this conclusion, in light of the presence of FPM is given. It is recorded in the *Assessment to Determine EIA Requirement* that the application should not be referred to a DAFM Ecologist whereas a referral and Appropriate Assessment did occur and *Designated and Non-designated habitat recommendations* are all recorded as N/A while specific mitigations are identified in the Appropriate Assessment.
4. Details of the proposed FPM measures were not initially supplied by the applicant, and issues raised by the DAFM were not satisfactorily resolved until correspondence was received dated the of September 2019. It was confirmed at Oral Hearing that the date on the report (the 9th of December 2021) was not the date on which the assessment described in the *Assessment to Determine EIA Requirement* document took place, and instead is a date at which the report was generated from an IT system. It is therefore unclear if any mitigation measures or consideration of the FPM as part of the AA process that might be relied upon were available when the assessment recorded in the *Assessment to Determine EIA Requirement* took place.

On the basis of the above, the Forestry Appeals Committee is satisfied that a series of errors were made in the making the decision in respect of the requirements of the EIA Directive, and that the decision should be remitted to the Minister for re-assessment of requirement for EIA, to resolve the discrepancies between the figures for forest cover provided in the *Assessment to Determine EIA Requirement* and the in-combination report produced as part of the Appropriate Assessment determination, and if necessary to re-evaluate the possibility of in-combination effects on the screened in Natura sites.

In relation to the grounds of appeal, these substantially relate to questions of rights of access to a private road. The Committee considers that deciding on matters of land ownership and rights of way are civil matters that properly fall to the Courts to determine, and that the granting of a licence for a forestry related activity such as a forest road does not in itself confer any ownership or entitlement to a right of way.

At the Oral Hearing, the appellant acknowledged historical use of the private road in question, albeit for the purposes of access to two now derelict dwelling houses to the east and north east of his dwelling.

The Committee also notes that in the SoF provided and in a submission at the Oral Hearing, the District Inspector states that he was unaware of sewerage or water pipes and would not issue the licence in its current form had he been so aware. He also states that he believed the distance from the dwelling to the

road was sufficient to mitigate any adverse impacts arising from truck passing during harvest – but makes no reference to construction traffic. In the SoF the District Inspector goes on to recommend investigations, guarantees and consultations between the applicant and the appellant.

The proposed project is for the construction of a forest road disconnected from the public road that relies on the use of a private road. The Committee is unaware of any specific policy or guidance in relation to access in such circumstances. However, the Committee does note the contents of the following publications:

1. The COFORD Forest Road Manual (COFORD, 2004) which states that at Section B.4 that:
Access to a forest property is gained either directly from a bordering county road or via an access route which could be a non-county public road, a right of way over someone else's land or a route constructed on the forest owners adjoining lands.
 - *Access from a bordering county road is covered throughout the manual.*
 - *Access via a non-county public road or right of way are not within the scope of this document as they may be subject to various limitations. [emphasis added]*
 - *Access over the forest owners adjoining lands should be constructed to the same design criteria as applies to forest roads.*

2. The Forestry Standards Manual (DAFM, 2015) which in respect of Afforestation states at section 5.3.1 (Ownership of access) that:

The applicant must own or have written permission, certified by a solicitor, to use or have right-of-way on the access route to the plantation. Where the owner's site is land-locked, access to a public road should be sought and written permission to use an access road should be provided to the Forest Service. Access and legal rights-of-way should be shown on the Biodiversity Map at Form 1 stage.

And at section 5.3.2 (Adequate access) that:

It is essential that a landowner is aware that s/he will require adequate access from a public road to the proposed plantation to establish, manage and harvest the crop and to accommodate forestry traffic in an unrestricted manner. Where adequate access does not already exist, the access must be capable of being upgraded to the required Forest Service forest road standard at harvesting stage. Exits / entrances to the main road should be planned and developed within the property, and adhere to any legislative planning requirements. In a situation where there are no proposals for a forest road, the land should be accessible from the public road by forwarders and other terrain vehicles.

While both these documents post-date the planting of the forest for which the proposed development is intended, they do indicate that the question of access is considered from both a best-practice and policy perspective to be an important aspect of the licencing system, that may be subject to constraints and limitations. These, together with the submission by the District Inspector in the SoF and at Oral Hearing, lead the Committee to the view that issues of access form part of the decision making process.

Prior to the grant of the licence the appellant provided details of the maintenance of this private road and of services that exist under the road to the DAFM as part of the licence. The applicant was made aware of concerns on the part of the appellant in a general manner through the DAFM, but not the specific nature of these concerns. The Committee is of the view that in light of the importance of issues of access these details should have been provided to the applicant, as they are of a nature that may influence the applicant's ability to exercise the licence and are part of the considerations of the DAFM. The FAC concludes that the failure to do so represents a breach of fair procedures for both the appellant and the applicant and represents an error in the processing of the licence.

In considering the appeal the FAC had regard to the record of the decision, the submitted grounds of appeal, and other submissions received. The FAC is satisfied that a series of errors was made in making the decision. The FAC is thus, in a decision made on the 15th of July 2022, setting aside and remitting the decision to the Minister regarding licence CN83195 in line with Article 14B of the Agricultural Appeals Act 2001, as amended, to Determine EIA requirement and to resolve the discrepancies between the figures for forest cover provided in the *Assessment to Determine EIA Requirement* and the in-combination report produced as part of the Appropriate Assessment determination, and if necessary to re-evaluate the possibility of in-combination effects on the screened in Natura sites. In so doing, the DAFM should draw the applicant's attention to the specific concerns raised in the Appellant's original submission with respect to the services and maintenance of the private road and provide them with time to reply on the matter should they wish. This information should also be provided to the relevant staff of the DAFM in considering the decision again.

Yours sincerely,

John Evans On Behalf of the Forestry Appeals Committee

