



10th November 2022

Subject: Appeals FAC085/2022 & FAC086/2022 against licence decision CN88699

Dear

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 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 the parties to the appeal.

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. A hearing of appeals FAC085/2022 & FAC086/2022 was held remotely by the FAC on 19th October 2022. In attendance:

FAC Members: Mr. Seamus Neely (Chairperson), Mr. Derek Daly & Mr. Vincent Upton
Secretary to the FAC: Mr. Michael Ryan

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 CN88699. The reasons for this decision are set out hereunder.

Background

The licence decision under appeal pertains to the afforestation of 39.49 hectares at Ballymackeogh, Co. Tipperary. The application describes the land as enclosed agricultural land with a grass, grass rush vegetation type and a neutral aspect. The land is crossed by electricity lines and the planting would take place across 10 plots with plots 3, 7 and 10 remaining unplanted, plots 1, 2, 4, 5, 9 being planted with Sitka spruce and birch and plots 6 and 8 planted with mixed species native woodland comprised of Scots pine, pedunculate oak, birch and other broadleaves. Ground preparation would be through mounding and there would be 4,893 metres of stock fencing. No use of fertiliser is proposed and weed control would be through manual methods and herbicide use in years 0 and 2. It is submitted that road access is

provided and maps show the lands adjoining a minor public road. In addition to operational details the application includes environmental information and notes its proximity to the Lower River Shannon SAC, being less than 3 km and in a referral zone. It is noted that the area is greater than 25 hectares and referral was made to the local authority.

The maps include a location map on Ordnance Survey Discovery series, a fencing map and biomap. The site adjoins a minor public road. The Biomap shows an outline of the plots and a number of environmental features, including relevant watercourses and associated setbacks, dwellings and associated setbacks and hedgerows and associated setbacks. The Lower River Shannon SAC is marked on the Biomap. The Biomap also shows the location of site notices, access to the lands, cultivation direction and the overhead power line crossing the site. The record includes a site notice dated 28th April 2021 and a photo of the site notice erected.

The application was referred to the Local Authority, An Taisce, Fisheries Board, and NPWS. An Taisce replied submitting that an EIA and Appropriate Assessment should be undertaken given the size, nature and location of the proposal. The submission also queries the size of the Area for Biodiversity Enhancement, water quality and cumulative effects. Inland Fisheries Ireland responded stating that it had no objection in principle to the application but that measures are required to protect water quality including the design of mound drains and silt traps and that the project should be carried out in accordance with Good Forestry Guidelines and Water Quality Guidelines and with the Environmental Requirements for Afforestation as published by the Forest Service.

The record includes ten submissions on the application, all of which were objections. The submissions raise similar concerns regarding a lack of communication with residents prior to the erection of site notices and that the site notices were erected almost two weeks after the date identified, concerns regarding health and safety in relation to fire and the narrow access road, risk of fire and the spreading of disease and impacts on local herds. They also submit that they have concerns in relation to biodiversity, water quality, communications and internet access, and the recreational use of the public road. A number of submissions raise concerns with the content of the application and the failure to identify specific houses.

The DAFM wrote to the Applicant on 19th August 2021 requesting supporting documentation in relation to the exclusion of specified areas and amendments to maps provided.

The Applicants Forester wrote to the DAFM on 17th September 2021 submitting that new maps had been provided and that the area within the SAC and a plot near to a house have been excluded. It was submitted that the Applicant had consulted with their neighbours. It was submitted that a number of plots are to be planted with native woodland and that additional broadleaf trees will be planted at edges of setbacks from sheds and dwellings. A number of new and amended maps are included on the record.

A further request was sent by the DAFM on 7th December 2021 requesting an invasive species management plan due to the presence of these species adjacent to the proposal. The Application included a habitat map and description of the habitats following a walkover survey by an Ecologist and Forester. The lands are described as primarily improved and wet grassland.

There is an Ecology Report on file, dated 10/05/2022, which records the submitted Habitat Map as accurate and describes a number of environmental features on the lands. It is recorded that an old birch tree and abandoned house offered potential roost features for bats and that there was no Annex I habitat, Annex II or Annex IV species, Annex I birds or other birds present. It was recorded that Giant Hogweed is present along the river bank and encroaching into the project area. While it is not recorded on this report, a second Ecology Report describes this first report as having been prepared by a DAFM Ecologist. This second report dated 12/05/2022 requires setbacks from the roosting features identified and a number of specified hedgerows. This report also records that Hen Harrier is addressed in the Appropriate Assessment (AA) and that the lands offer little value to Curlew and owls.

There is an Appropriate Assessment Screening Determination on the record dated 12/04/2022. A description of the proposal and the available information, including submissions, is included in this document. Ten European sites are identified within 15km of the proposal. Each site is considered in turn along with its qualifying interests and conservation objectives and reasons are provided for the screening conclusion. Other plans and projects, forestry and non-forestry, are considered. The screening concludes that the proposal should proceed to AA in relation to Lower River Shannon SAC due to proximity and hydrological connection, invasive species and potential disturbance. All other sites are screened out and in relation to Hen Harrier and the Slievefelim to Silvermines Mountains SPA it is noted that the proposal is 2.9 km from the SPA and that the lands do not provide suitable habitat. This document also notes the closest waterbodies to the proposal and that the closest, Killeengarriff 010, has been assigned a good status.

The DAFM recorded an Appropriate Assessment (AA) Report in relation to the Lower River Shannon SAC dated 12/05/2022. This records the operations and basis for the AA. Each of the qualifying interests of the SAC are considered along with its conservation objectives. Potential effects are identified and described as are the measures required to mitigate the effects. Potential effects are generally of an indirect nature and measures primarily relate to operational setbacks and measures to control potential runoff. The Report considers other plans and projects and potential for residual impacts and concludes,

Therefore, it is deemed that this 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 Site.

The DAFM recorded a separate Appropriate Assessment Determination which summarises the operational details and sources of information and screening and Appropriate Assessment undertaken. This document lists the required mitigation measures and concludes,

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 a second Appropriate Assessment screening document that records a Date Inspection Certified as 29/06/2022. This document refers to the AA already undertaken and appears to be a draft document.

It is recorded that a site inspection was carried out by the DAFM District Inspector on 18/08/21.

The DAFM recorded a consideration as to whether the proposal should be subject to an EIA. In addition to the previously identified records, this records a consideration of the proposal across a range of criteria and included that the application should not be subject to the EIA process.

The licence was issued on 05/07/2022 subject to conditions. These include a requirement to adhere to the AA Determination and Ecological Report and to contact Inland Fisheries Ireland one month prior to the commencement of works.

Appeals

There are two third party appeals against the decision and the full grounds of appeal and submissions received by the FAC have been provided to all parties. The DAFM informed the FAC that the documents required under the Forestry Appeals Committee Regulations 2020 are provided through the Forestry Licence Viewer and the parties were notified of this.

In summary, the grounds of FAC085/2022 submit that the Appellant's dwelling directly borders the afforestation area and that they had submitted an objection to the original application. It is submitted that they remain unclear that their dwelling will be protected as per the Forestry Standards Manual, that their dwelling borders the property and the proposal is to plant trees right to the border. It is submitted that they received no correspondence from the Forestry Division and have tried to make sense of the myriad of documentation online. The grounds submit that the plot numbers and areas changed in the documentation, it is submitted that the Ecology Report does not include a legend and that on Afforestation Biodiversity maps 1 and 2 dated 07/09/21 their dwelling is marked but they cannot see the yellow setback around it. It is submitted that due consideration has not been paid to the impacts on the Appellants home specifically impacts on light views, property values, internet and that the current regulations regarding fire are inadequate. It is submitted that having the forest adjacent to their home brings a variety of negative consequences and will lead to a sense of enclosure. It is further submitted that the Applicant was advised that consultation with neighbours was required and that no such consultation took place.

The grounds of FAC086/2022 submit that the social impact of the proposal has not been considered and that there has been no consultation with local residents. It is submitted that the proposal lies in a rural landscape and is large in scale and will alter the landscape and that they contest the conclusion that the forest design submitted is sufficient to prevent any significant impact on the landscape. It is submitted that while consultation with neighbours was advised no such consultation occurred. It is submitted that this is a popular walking route for residents and that they are concerned in relation to safety, recreational space and that the sense of community would be reduced. It is submitted that the roadways are not sufficient or suitable to access the forestry plantation and are already in poor condition and that there are Health and Safety concerns amongst the residents.

The DAFM provided statements to the appeals which were provided to the parties. These statements provided an overview of the processing of the application and the steps and dates involved. It is submitted that the application was first advertised on 19/05/21 and advertised for a second public consultation on 18/05/22. In response to FAC085/2022, it is submitted that there are no plot numbers on the Forestry Licence Viewer and that the numbers are labels for display purposes to aid the user and have no relationship with plot numbers. It is submitted that Plot 9 is shown as label 10 and has a claimed area of 4.55 hectares which was corrected to 4.53 when digitised by the DAFM. It is submitted that the setbacks from dwellings are 60 metres or 30 metres with permission and that these are obligations.

The statement continues that the maps were amended to record the Appellants dwelling and to address the exclusion of certain areas and additional native woodland planting.

In relation to the maps on the Ecology report it is submitted that the red line relates to the boundary of the area for licence and that Bio maps 1 and 2 include a grey exclusion zone visible on the legend 16/09/21. It is submitted that an appropriate setback of 60 metres was sufficient and that broadband signal was an issue for suppliers. It is submitted that fire risk was assessed and based on vegetation present, type and number of water features the DAFM was satisfied that the risk is low and reference is made to the habitat map and vegetation type. It was submitted that the concerns of the Appellant were noted and that the forest design was amended to incorporate additional open space and significantly more broadleaf planting throughout the project area. It is submitted that notices were in place at time of inspection and the proposal was available on the Forestry Licence Viewer and that appropriate referrals were made to NPWS, IFI, Local Authority and An Taisce and that the Forester stated that the Applicant had consulted with their neighbours.

In response to FAC086/2022 it is submitted that site notices were in place at time of inspection, that the proposal was available on the Forestry Licence Viewer, appropriate referrals were made to referral bodies and that the Forester had submitted that the Applicant had conferred with their neighbours and expected submissions. It is submitted that landscape considerations were addressed and that the application was referred to the Local Authority although no response was received. It is submitted that hedgerows will be retained, a significant native broadleaf element has been included, that applications greater than 50 hectares required an EIA but that this application was 39+ hectares and it was referred to the Local Authority as it was greater than 25 hectares. It is submitted that forest cover was low in the

area and that the afforestation project and associated operations would be carried out and completed in accordance with the Environmental Requirements for Afforestation and the Forestry Standards Manual.

In relation to social activity and sense of community it is submitted that these are addressed through the 60 metre dwelling setbacks, setbacks from roads, native broadleaf planting and the Environmental Requirements for Afforestation and conditions on the licence. It is submitted that the Forest Standards Manual requires setbacks of 10 metres with 5 rows of broadleaves or 20 metres long a conifer edge and that these setbacks have been devised with detailed consultation of stakeholders. It is submitted that the upkeep and maintenance of public roads is a matter for the Local Authority and outside the remit of the DAFM.

Considerations of the Forestry Appeals Committee

The FAC considered in the first instance appeal FAC085/2022 and the grounds that relate to the potential for direct impacts on their property. In relation to the numbering of plots the FAC understands that the labels appearing on the Forestry Licence Viewer do not correspond with the plot numbers of the application and that these are used for general information purposes. The plot numbers on the application maps did change following a request by the DAFM to split plots and map an electrical line. The FAC considers it appropriate that both versions of the maps are maintained on the record. While the dwelling of the Appellant was not identified on the initial Biomap, this was amended following the submissions made on the application and a further information request by the DAFM. The grounds highlight that the legend is incorrect on the amended map titled *Afforestation Biodiversity Map: CN 88699 Map 2* which was uploaded on 17th September 2022 as the dwelling setback is given a yellow colour while the setback is marked in grey on the map. The FAC agrees that this is an error but considers it to be of a minor and primarily clerical nature. The legend is correct on other maps submitted and the requirement to implement a 60 metre unplanted setback, unless permission is explicitly granted where upon this can be reduced to 30 metres, is set out in the *Forestry Standards Manual* and *Environmental Requirements for Afforestation*. Compliance with these documents is a requisite condition of the licence even if a dwelling was not identified on the application. In this case the original map submitted was incomplete but this was addressed through a further information request and that the licensee is required to maintain a setback of 60 metres. The licensee has also undertaken to plant broadleaves on the edge of all dwelling setbacks.

In keeping with the Forestry Regulations 2017 and the Forestry Standards Manual, the FAC understands the map to show a red line delineating the boundary of the land to which the application relates and that this would include setbacks and other areas which would not themselves be planted but form part of the overall application.

While the FAC considers that an error was made in the legend provided, the FAC is not satisfied that this constitutes a serious or significant error in the making of the decision.

In relation to potential effects on light and other amenities, the proposal lies to the south of the dwelling and is separated by an existing hedgerow. The plot extends south-westerly but at a greater distance and no planting would occur to the east, north or west of the dwelling. Planting cannot take place within 60 metres of the dwelling and this edge would be fringed by additional broadleaf planting. In relation to the felling of the trees, this would take place at point in the future and it is not possible to know what form this would take at this stage if it occurred. The lands are situated in a managed, agricultural landscape and as noted the dwelling is separated by an existing hedgerow. It is common practice to maintain edge planted broadleaves during harvesting. The grounds make a number of claims regarding property values, internet access and fire but provide no evidence of these matters. The public road lies to the east of the dwelling and no planting would take place along this access. As noted, planting would only occur in one direction from the dwelling. In relation to fire, while the grounds contend that fire regulations are inadequate they do not elaborate on this contention and provide no specific evidence of this. The lands are at a relatively low elevation and surrounded by pasture and bordered by a watercourse and would not be considered at a high fire risk and use of fire for agricultural management would not be common in such areas. Having regard to the nature and scale of the proposal, the FAC considers that a setback of 60 metres from the dwelling is sufficient to avoid any significant adverse effects on light levels to the Appellant's dwelling or on residential amenity generally.

Both FAC085/2022 and FAC086/2022 submit grounds in relation to public consultation. Part 6 of the Forestry Regulations 2017 addresses consultation in relation to forestry licences. Regulations 10 and 11 requires the publication of a notice by the Minister and the erection of a site notice by the Applicant. The FAC noted that a notice of the application was published on the DAFM website and details were provided on the Forestry Licence Viewer. The application was subject to two rounds of public consultation, one at application and a second on 18th May 2022, in relation to the Appropriate Assessment undertaken. The record includes copies and photos of the site notices and a map showing the location of the site notices. A number of submissions were made on the application and the record shows that the DAFM sought further information and that the application was amended.

In relation to the specific request for further consultation by the DAFM and the response from the Applicant's agent that consultation had been undertaken and that further submissions were anticipated, the FAC noted that the grounds of both appeals contend that no further consultation took place with the appellants. The Applicant made no submission to the FAC while the DAFM submitted that they had accepted the response made by the Applicant's agent. The FAC considered that the request made by the DAFM to the Applicant was of a very general nature and stated that "*Consultation with neighbours required.*" The request did not state what form this consultation should take, how this was to be communicated or what time frame this should occur. The Applicant's agent submitted to the DAFM that a consultation had taken place and the FAC considers it reasonable for the DAFM to accept this in the context of the general request that was made. While the Appellants submit that they were not contacted directly, ultimately, the requirements for public consultation are provided for in the Forestry Regulations 2017 which include the erection of a site notice, which was undertaken, and the acceptance and consideration of submissions made by the public by the Minister for Agriculture, Food and the Marine, which are reflected in the further information requests. The FAC are satisfied that these

provisions were met in this case save for the record in relation to the EIA considerations which are described further in this letter.

In the context of the grounds that relate to other effects on the environment, the FAC considered the record of the decision and the *Assessment for EIA Requirement* document dated 29th June 2022, in particular. Annex II of the EU EIA Directive (2011/92/EU as amended by 2014/52/EU) lists classes of development for which Member States may set thresholds or criteria for requiring environmental impact assessment. This includes “initial afforestation and deforestation for the purpose of conversion to another type of land use” and road construction. The Forestry Regulations 2017, SI 191 of 2017, require that afforestation of 50 hectares or more be subject to an Environmental Impact Assessment (EIA). Afforestation of less than the threshold of 50 hectares but which the Minister considers likely to have significant effects on the environment, taking into account the criteria set out in Schedule 3, must also be subject to EIA.

The record includes a number of documents that describe the likely effects of the proposal on the environment including the application and maps, ecological reports, screening and Appropriate Assessment Documents. The Appropriate Assessment describes the likely significant effects on a European site and sets out mitigation measures related to these effects. The FAC understands that the reasons for the decision not to proceed to EIA might be read across different documents.

The FAC understands that the DAFM employs a Geographic Information System and multiple spatial datasets as part of its acceptance, processing and assessment of an application as described in the *Forestry Standards Manual* (DAFM, 2015) and *Forests & Water Achieving Objectives under Ireland’s River Basin Management Plan 2018-2021* (DAFM, 2018).

When making an application for a forest licence, an applicant must provide the information in Schedule 1 of the Forestry Regulations 2017. This includes a physical description of the whole project and location; a description of the aspects of the environment likely to be significantly affected and a description of any likely significant effects on the environment from the expected residues, emissions and waste where relevant and the use of natural resources, to the extent of the information available on such effects. This information must take account of the criteria identified in Schedule 3 of the Forestry Regulations 2017.

The application includes details of the proposed operations and a series of maps including detailed Biomaps showing environmental features on and surrounding the lands. In addition to the environmental features on the maps provided, the application includes a range of other environmental considerations. In particular, it is noted in the original proposal lies adjacent to and partially within an SAC. The application also recorded a number of responses to questions that relate to possible effects on the environment some of which automatically require the submission of an additional report and further information on the nature of effects and measures to mitigate such effects. In this instance no additional reports were submitted as part of the original application. While this might be reasonably interpreted as the Applicant being of the view at the application stage that there are no likely significant effects arising from the proposal, the FAC considers it would be clearer if this was stated.

Through a further information request and, it would appear, in response to submissions from the public the DAFM requested that the Applicant amend the proposal to exclude certain areas, identify certain environmental features and the required setbacks. The FAC considers that there is a requirement to maintain planting 60 metres from any dwelling under the *Environmental Requirements for Afforestation* whether stated in the application or not. The Applicant also submitted that the 60 metre setback would be supplemented with adjoining broadleaf planting.

Article 4(5) (b) of the EIA Directive states, in relation to a sub-threshold Determination, that,

where it is decided that an environmental impact assessment is not required, state the main reasons for not requiring such assessment with reference to the relevant criteria listed in Annex III, and, where proposed by the developer, state any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

Regulation 21 requires the Minister to provide reasons for their decisions in relation to applications for licences.

The FAC understands that the record of the decision, including the maps and Appropriate Assessment, and in particular the *Assessment for EIA Requirement* determination and licence provide these reasons. Furthermore, the FAC understands that such reasons and information should allow members of the public to check whether an adequate screening for EIA was carried out, and to enable interested parties to decide whether to appeal against the decision.

In this instance, a number of responses are recorded in the *Assessment for EIA Requirement* document as N/A which the FAC understands to represent *Not Applicable*. In addition, the FAC considers that a number of responses appear to be contradictory or to require the Minister to take certain actions which were not taken. While the form provides for further commentary and reasons to be provided none were included in this case. The FAC considers that some of the matters that appear to be errors might have been addressed had further written reasons been provided.

Amongst the criteria to be considered in the screening is the cumulation of the project with other plans and projects, both in relation to the characterisation of the project and in terms of likely significant impacts. While the Minister recorded a separate characterisation of plans and projects in the area, this is not explicitly cross-referenced in the Determination, which itself only refers to forestry projects. While the FAC would consider it reasonable that the record as a whole should be considered and that the reasons for not considering that the proposal is likely to have a significant effect on the environment might be found in separate documents, it would be clearer if an explicit reference to existing and approved projects was included.

The determination notes that the application, together with existing afforestation of 3 years or less within a 500 metre radius, constitute an area greater than 50 ha but provides no reasons as to why this was considered or the significance of the response. From reviewing the Forestry Licence Viewer the FAC understands the other afforestation to relate to a licence issued for an area to the northeast of the proposal on agricultural land on the opposite side of the river bank.

The grounds of appeal raise specific concerns with the statement that the forest design submitted (and any additional design improvements recommended) is sufficient to prevent any significant impact on the landscape and that the design complies with the *Forestry and the Landscape Guidelines*.

The *Forestry and Landscape Guidelines* do not appear to have been included in the conditions of the licence. While there is a reference to the *Department's environmental and silvicultural guidelines* this would appear to refer to the stated conditions. Adherence with the *Environmental Requirements for Afforestation* have been included and page 2 of that document states,

The Environmental Requirements for Afforestation replace those measures relating to afforestation contained within the following Forest Service Environmental Guidelines: Forestry & Water Quality Guidelines, Forestry & Archaeology Guidelines, Forestry & the Landscape Guidelines, and Forest Biodiversity Guidelines. (Note, however, that these guidelines still apply to other Forest Service regulated activities, as specified in any approval, consent or licence issued.)

While it appears to the FAC that both documents contain many of the same requirements and most if not all of the main operational requirements, the reliance on the *Forestry and Landscape Guidelines* is technically an error and introduces confusion into the screening process.

For the same reason the reliance on the *Forestry and Water Quality Guidelines* and *Forestry and Archaeology Guidelines* would represent an error although not necessarily one of a significant nature.

In responding to the appeal, Officers of the Minister provide reasons as to why it was considered that significant effects on landscape would not occur. While these matters, such as the imposition of setbacks are specified on the record by the Applicant, it would be clearer if such reasons were incorporated into the processing of the application and the Determination reasons as relevant.

The Determination states that the application and its associated operations threaten the achievement of 'good ecological status' recovery objective set for the underlining waterbody or waterbodies under the WFD River Basin Management Plan yet no reasons are provided and the licence was issued. This would appear to be in contradiction to the obligations on the Minister to refuse authorisation, unless a derogation is granted, for an individual project where it may cause a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by the directive as interpreted in Case C-461/13 of the Court of Justice of the European Union. This would be a serious and significant error.

However, the determination goes on to state that adherence of the proposal to the *Forestry and Water Quality Guidelines*, and any additional conditions attached to the approval would be sufficient to prevent any potential significant impact to aquatic zones and their Q value. As different goals are stated, it is unclear whether the Minister is of the opinion that the conditions on the licence are sufficient to ensure that the objectives of the Water Framework Directive are met. Again, in this instance these *Guidelines* were not attached as conditions of the licence, although adherence with the *Environmental*

Requirements for Afforestation is a condition of the licence, and no reasons are provided that might help to resolve the matter. This matter should be resolved in undertaking a new decision.

The Determination records that comments from the Local Authority were not requested however a letter is on the record as having been sent to the Local Authority on 19/05/2021, although no response was provided. The Minister is required to consider densely populated areas which is also recorded as Not Applicable. While this area does not appear to be densely populated the consideration of the Minister should be recorded.

In relation to designated and non-designated habitats, it is recorded that the application should not be referred to a DAFM Ecologist, whereas, it is noted that a referral did occur and in relation to recommendations all are recorded as Not Applicable. In this instance the site was considered by a DAFM Ecologist and a habitat surveys, ecological assessment and Appropriate Assessment under Article 6 (3) of the Habitats Directive were recorded and attached as conditions on the licence.

The FAC considers that the Minister is required in considering the likely significant effects of a sub-threshold proposal to take account of the environmental sensitivity of geographical areas likely to be affected by projects and to have particular regard to European sites. The fact that the Appropriate Assessment is recorded as not being considered as part of the Determination is a serious error.

As noted, the Minister is required to have regard to the relevant criteria identified in Schedule 3 of the Regulations. While the FAC considers that the matters addressed on the record, both in the application and the assessment of the application by the DAFM, reflect a consideration of the relevant criteria in Schedule 3, the FAC considers that it would be clearer if the Minister employed the exact language of the criteria as headings or another form of identification in the application and assessment process.

Furthermore, while it can be reasonably interpreted that in concluding that the proposal should not be subject to the EIA process the Minister considers that the proposal is not likely to have significant effects on the environment taking into account the criteria set out in Schedule 3, the FAC considers that it would be clearer if this language was employed.

For these reasons the FAC is of the view that the Minister should undertake a new *Assessment for EIA Requirement* in keeping with the requirements of the Forestry Regulations 2017 and the EU EIA Directive.

The lands themselves are agricultural pasture in a landscape of managed agricultural land and are situated towards the end of a minor public road. The management of the public road network is a matter for the relevant road authority - in this case being Tipperary County Council. The proposal is likely to involve an increase in road traffic during operations but these would be of a limited nature and periodical. The application is for the afforestation of a commercial forest and applications for tree felling and forest road works are subject to separate consent systems at the appropriate time and when the details might be known. In addition to dwelling setbacks there would be road setbacks and plots 7 and 10 which adjoin the public road would be unplanted. Plots 6 and 8 which are adjacent to the public road would be planted with mixed native species only. The FAC does not consider that there is any convincing

evidence that the proposal would have a significant effect on the environment. The FAC does not consider that it should substitute its decision for a decision of the Minister in this case and is satisfied that setting aside and remitting the licence decision is the most appropriate decision.

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions received. The FAC is satisfied that a series of serious and significant errors was made in the making of the decision. The FAC is, thus, setting aside and remitting the decision of the Minister regarding licence CN88699 in accordance with Section 14B of the Agriculture Appeals Act 2001, as amended, to undertake a new determination in keeping with the requirements of the Forestry Regulations 2017 and the EU EIA Directive as to whether the proposal is likely to have significant effects on the environment.

Yours sincerely,

Vincent Upton, On Behalf of the Forestry Appeals Committee