



22nd November 2022.

**Subject:** Appeals FAC 022/2022, 023/2022, 024/2022 and 025/2022 regarding licence CN86193

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 the Marine (DAFM). The FAC established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001 as amended, has now completed an examination of the facts and evidence provided by all parties to the appeals.

#### **Background**

Licence CN86193 comprises the afforestation of 5.26 hectares at Beihy, County Leitrim which was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 14<sup>th</sup> March 2022 subject to conditions. It is noted that the project site was the subject of a previous licence application (CN81189) and appeal to the FAC under reference FAC 187/2018 in which the decision of the FAC was to cancel the licence.

#### **Hearing**

A hearing of appeals FAC 022/2022, 023/2022, 024/2022 and 025/2022 was held remotely by a division of the FAC on the 14<sup>th</sup> September 2022.

In attendance at the hearing were:

FAC members                      Mr. Seamus Neely (Chairperson), Mr. Iain Douglas and Mr Derek Daly.  
Secretary to the FAC:              Mr. Michael Ryan

Having regard to the particular circumstances of the appeals, an examination of submissions received and the documentation relating to the licence, the FAC considered that it was not necessary to conduct an oral hearing in order to properly and fairly determine these appeals.

#### **Decision**

Having regard to the evidence before it, including the record of the decision by the DAFM, the notices of appeal, and all other submissions received, and, in particular, the following considerations, the FAC has decided to set aside and remit the decision of the Minister regarding licence CN86193.

#### **Licence**

The licence pertains to the afforestation of 5.26 hectares at Beihy, County Leitrim. In the course of the DAFM assessment of the licence the makeup of the application was amended from an initial six plots to five plots by the removal of plot 6 and the amendment of species mix within the permitted five plots. The application was initially accompanied by mapping including location maps, biodiversity/operational

mapping, fencing map and public notices. Subsequent submissions by the applicant included a Natura Impact Statement (NIS), an Appropriate Assessment Pre-Screening Report as well as revised mapping and species planting details. The five plots as finally determined by DAFM are in close proximity to each other with plots 1, 2 and 3 located contiguously on the eastern side of a local road and plots 4 and 5 on the western side of the local road. A revised species map submitted (dated 14/02/2022) refers to plots 3 and 4 as bio with remaining plots 1, 2 and 5 containing a species mix of 85% Sitka spruce and 15% Birch.

The project is in very close proximity to the county boundary with Longford. There are a relatively high number of dwellings in the area. There are no major watercourses on or bounding the project site as it relates to the five plots but there is reference to field drains. The site is within the Black River (South Leitrim)\_010 River Waterbody WFD for which the EPA records the status as good and in terms of risk same is indicated as not at risk. The predominant soil type underlying the project area as indicated in documentation submitted is predominantly podzols in nature. The slope is predominantly flat to moderate (<15%). The vegetation type(s) within the project area comprise grass/rush.

The licence application was referred to Leitrim and Longford County Councils. No response is recorded as being received from Leitrim County Council. Longford County Council in a response dated the 8<sup>th</sup> June 2020 refers to impact of forestry on the local roads network and requests details in relation to access onto the road network. It raises issues in relation to the impact generally of forest accesses and on the visual impact of those accesses. The application was referred to An Taisce and no response is recorded on file.

There were a number of third party submissions which raised concerns regarding pollution of local rivers and waterways; loss of habitat and impact on wildlife, concerns in relation to noise and traffic pollution; risk from forest fires to property; the loss of views, visual impact on the scenery of the local area and impact on daylighting; the decimation of local communities and loss of amenities with the level of forestry in the rural area; impact on tourism and local businesses; issues in relation to AA screening, full EIA Screening and the cumulative effect of forestry and there was reference to the previous licence and (a previous) decision of FAC on the site.

The licence was also referred to the DAFM Archaeologist who in a report dated 21st October 2020 outlines conditions to be included in any licence issued. The licence was also assessed by the DAFM Forestry Inspectorate and DAFM ecologists.

In the course of the DAFM assessment in particular in relation to Appropriate Assessment (AA) and screening for AA the DAFM Inspector recorded a screening for Appropriate Assessment in which four European sites are recorded within 15 kilometres of the project area. Three of the sites Brown Bog SAC 002346, Clooneen Bog SAC 002348 and Lough Forbes Complex SAC 001818 were screened out. One site Ballykenny-Fisherstown Bog SPA 004101 was screened in as it could not be excluded, based on objective scientific information, that the project itself (i.e. individually) would have a significant effect on this European Site, based on the finding of impact on supporting habitats and/or species within foraging range. The species in question and its foraging range is the Greenland White-fronted Goose (GWFG) a Qualifying Interest in Ballykenny-Fisherstown Bog SPA 004101. An Appropriate Assessment Screening Determination, however, considered that Lough Forbes Complex SAC 001818 should also be screened in as a precautionary measure and concluded as a result, that the project must advance to Appropriate



Assessment Stage 2 in relation to the European Sites. Ballykenny-Fisherstown Bog SPA 004101 and Lough Forbes Complex SAC 001818.

In relation to EIA, the DAFM Assessment to Determine EIA Requirement concluded that this application need not be subject to the EIA process. It indicated the stated figure for forest cover in the underlying waterbody as 36.98% which is noted to be at variance with the percentage of forest cover (10%) as recorded in the various in-combination documents / statements.

### **Appeal**

There are four appeals against the decision to grant the licence and the full grounds of appeal and response from the DAFM have been provided to the parties.

In relation to FAC 022/2022 the grounds of appeal in summary refer to:

In relation to AA;

- Reference to procedural issues in the assessment of the licence application; that the AA is flawed in relation to omissions in the Inspector's Certification; absence of reference to the change arising from the omission of a plot; that the impact on the loss of the foraging habitat of the Greenland White Fronted Goose is not assessed for which the NIS identified the site as a suitable foraging habitat and therefore there is no basis for indicating no impact arising from a loss of foraging habitat. A complete AA would address the issue of foraging habitat.
- The mitigation of avoiding disturbance in the winter period is illogical if the site is not suitable as stated as a foraging habitat. There is no mitigation if the site is within a core habitat range. In addition other mitigation measures are not sufficiently clear or precise as there is for instance no Forestry Service guidance on hygiene and biosecurity measures.
- The grounds question how measures such as extreme weather events are measured for compliance.
- Reference is made to compliance with AAD but the AAD is a very specific legal assessment and it is not a general ecological assessment.
- Some of the mitigations outlined are not relevant to the screened in Natura sites and there is a lack of precision in the AA.

The grounds contend there is a discrepancy between the classification of the site in relation to whether it is a GP4 Wet Grassland as identified in the Irish Semi-Natural Grassland Survey and the NIS which identifies the site as GP3 dry humid acid grassland which should be explained and the grounds questions why the project was not referred to NPWS. The issue of the integrity of High Nature Value grasslands is raised and questions whether negative effects from Sitka Spruce on HNVs can be avoided.

It is contended that a 3 metres setback from hedgerows is inadequate to ensure the long term viability of hedgerows. The use of set back as a requirement for biodiversity enhancement is contended to be expedient. Reference is made in the assessment to no forest cover % for the townland five years ago and reference is made to the differences in forest cover stated in the incombination statement and the EIA Screening.

Discrepancies are contended to appear in relation to whether the site is a High Amenity area and reference is made in this regard to the AAD referring to the site as outside areas classified as high visual amenity or areas of outstanding natural beauty in the Leitrim CDP 2015-2022 and the EIA Screening which has identified the site as High Amenity Landscape. Other discrepancies are outlined in describing the location of Cloonageeher Bog NHA and that the EIA determination cannot therefore be relied upon.

The grounds request an oral hearing.

In relation to FAC 023/2022 the grounds of appeal in summary refer to:

The issue of potential pollution of watercourses in particular the Blacksticks River in particular from pesticides and that the site is part of a floodplain and should not be planted.

The diversity of wildlife and the likely adverse impact on wildlife arising from this project is referenced.

The risk from fire is referenced as is the impact on daylight and issues relating to increased vermin and impact on telecommunications are also raised. Reference is also made to the previous cancellation of a licence on the site.

In relation to FAC 024/2022 the grounds of appeal in summary refer to:

The issue of potential flooding arising from difference in site levels is raised and problems with clearing drains if the forestry proceeds. That the river down stream floods and reference is made to dangers to fish species in the river. It is also contended that the development would give rise to vermin and a threat to farm animals and poultry.

In relation to FAC 025/2022 the grounds of appeal in summary refer to:

A previous licence granted by DAFM which was the subject of an appeal to FAC for the same parcel of land (reference CN81189) and a previous appeal (reference FAC 187/2018) which was the subject of an oral hearing on the 25/02/2020 in which the decision of the FAC was to cancel the licence. The basis of that previous decision was that the site was within 6.9 kilometres of Ballykelly Fisherstown SPA and the site was within the foraging distance of the qualifying interest the Greenland White Grouted Goose.

It is contended that no consultation has taken place and that the owner of the land does not live in the locality. Reference is made that no environment impact or any other documentation having been submitted by the party submitting the application. It is also contended that an EIA should have been sought by the Minister from the applicant.

Reference is made in this regard to 13(2)(c) of the Forestry Regulations 2017 and in particular to matters listed in 1(a), (f), (g) and in 2(a)Schedule 3 of the Regulations to seek an EIS and that this was rejected but remains a valid concern worthy of consideration.

Reference is made to Article 6(3) of the Habitats Directive and that the previous decision referred to an absence of screening and it is unclear if screening as required by Article 6(3) has occurred in the current proposal by DAFM and if it has a copy of the screening and environmental impact should have been made available to the appellant for consideration by DAFM.

Other matters raised in the grounds refer to a risk from fire to life and property and that it is unclear in relation to the 60 metre setback and where it applies from. The risk to power lines from falling trees and



other risks from falling trees is referenced as is the impact to residential amenities referring to loss of sunlight.

It is contended that it is unclear where the 20% deciduous will occur, that there will be potential increased rodent wildlife and the threats arising. The spraying of chemicals and insecticides and consequent effects is also referenced as is flooding and run off to watercourses in particular the Black River with hydrological connection to the Rinn River NHA.

#### **DAFM Statement**

A response Statement of Fact (SoF) was provided on behalf of the Minister for Agriculture, Food and the Marine for all four appeals which is on file. This outlines the procedure adopted by the DAFM in processing the application, the related dates and the final decision in relation to the licence. The statement from the Department regarding the appeal states that the decision was issued in accordance with DAFM procedures, SI 191/2017 and the Forestry Act.

In the Inspector's comments on all four appeals it is indicated that *"DAFM would like to point out that a significant error was made in relation to some of the EIA outputs on iFORIS. Percentage forest cover in the underlying forest cover was identified as 37% on 11th March 2022. This conflicts with the in-combination statement percentage forest cover at 10%. Due to this error DAFM requests that this licence is remitted for a new EIA screening to be undertaken"*. No other observations are made by the forestry inspectorate in relation the grounds of appeal submitted by the appellants.

There was also a response from the DAFM ecologist with individual responses to the four appeals.

In relation to appeal FAC 022/2022 and the issue of a flawed AA process in summary it is indicated that a Natura Impact Assessment (NIS) was submitted for the application and as such there was no requirement for an AAR. The NIS of 12/11/2021 failed to screen-in Lough Forbes SAC 001818 despite the downstream hydrological connection, this was relevant with the inclusion of a plot which lies adjacent to an aquatic zone and that the connection is weaker with the exclusion of this Plot from the project. However with the presence of relevant watercourses in the project area, which connects to the aquatic zone east of the project area (Black (South Leitrim)\_030) Lough Forbes SAC 001818 was screened-in as a precautionary measure as there is a source-pathway-receptor. The Statement notes the project area is located within the WFD sub-catchment Black (South Leitrim)\_SC\_010, while Lough Forbes SAC 001818 is located within Shannon[Upper]\_SC\_050/ Shannon[Upper]\_SC\_060. The Black (South Leitrim) \_030 WFD River waterbody drains from the project area and connects to the Rinn\_030 which then flows into Lough Forbes SAC 001818 some 14.14km surface water distance downstream with potential (low risk) for indirect impacts to habitats.

In relation to the ground of appeal that the Appropriate Assessment is flawed as it failed to consider loss of potential foraging habitat for Greenland White Fronted Geese(GWFG), DAFM in response has indicated that the project is located ca. 6.8km to the west of Ballykenny-Fisherstown Bog SPA 004101 across the N4 and that this is at the upper end of the core foraging distance scale of 8km. The closest Irish Wetland Bird Survey (IWEBS) sites are OF006 at Lough Forbes and Drumshanbo Lough OB012. There are no GWFG records for either of these sites since IWEBS counts began in 2010/11. The last records for GWFG at the SPA was in 1990/91 (11 individuals). The assessment of the project area suitability for GWFG within the NIS included Plot 1 (adjoining the aquatic zone) which was subsequently excluded from the application. Although grassland is present throughout the site, this does not automatically correlate to suitable habitat. It is stated that the AASD and AAD were based on an

examination of a range of data. It was determined that although the project area falls into the core foraging range for GWFG, the value of the project area was sub-optimal and the approval of licence CN86193 would not adversely affect the conservation objectives of Ballykenney-Fisherstown Bog SPA 004101. In relation to the inclusion of mitigation against disturbance of GWFG being illogical, it is stated that the mitigation was applied using the precautionary principle and this also applies in relation other mitigation measures.

The issue of grassland classification is addressed and it is indicated that the field survey for the NIS was carried out on the 10<sup>th</sup> of November 2021 with further field survey on 27<sup>th</sup> January 2022 and that this led to reclassification of the grassland. Based on this, the supplementary ecology report concluded that the area should be excluded from planting.

In relation to referral to NPWS it is stated that the Forest Service have agreed referral procedures with National Parks and Wildlife Service with mandatory referrals for afforestation where the project area or part thereof is within a SAC, SPA, National Park, NHA, pNHA or Nature Reserve or within a section of a Hen Harrier Red Area (of High Likelihood of Nesting Areas), (HLNAs) extending outside of the SPAs. All other referral circumstances are discretionary. It should be noted that the current application was assessed by an ecologist on behalf of the applicant and was also assessed by an ecologist working on behalf of DAFM.

In relation to hedgerow setbacks, it is stated that the Environmental Requirements for Afforestation (2016) outlines the required setbacks for hedgerows with further details in Section 2.5.4 and that the recommended setback for hedgerows is 5m but it is not a requirement. Hedgerows must be retained and may be enhanced by either a setback or broadleaf planting adjoining. Areas for Biodiversity Enhancement (ABEs) are addressed in sections 2.5.2 and 2.5.3 of Environmental Requirements for Afforestation 2016.

The DAFM Ecologist in response to the grounds regarding FAC 023/2022 stated that there are streams leading to the Blacksticks river directly from this land and this type of forestry would cause concern for pollution from pesticides being used to control weeds. It is indicated that with the removal of plot 1 from the project area, there is no aquatic zone adjoining the project area and that appropriate silt and sediment mitigation will be adhered to utilising current best practice. A similar response is stated in relation the issue of location within a floodplain of the Blacksticks river. In relation the appellant raising the issue of a huge amount of protected species under the Wildlife act 1976 living on it and also a range of plants and mosses under the Flora (protection) order 2015 the response outlines the range of protected species and the position regarding their presence in the context of the habitats they locate in and favour.

The DAFM Ecologist in response to FAC 024/2022 concerning flooding indicated that with the removal of plot 6 there is no aquatic zone which adjoins the project; issues relating to vermin are subjective; badgers and pine martens are protected species and the issues raised are not relevant to the AA process; in relation to spring locations none were noted. The DAFM Ecologist in response to FAC 025/2022 indicated that the issue of the potential foraging habitat for Greenland White-Fronted Geese (GWFG) is raised and a similar response to that for FAC 022/2022 is outlined. Responses on the issue of flooding, the presence of wildlife vermin are similar to responses made to other appeals.

#### **Assessment of Appeal Grounds.**



As already indicated the FAC considered the request for an oral hearing and having examined the documentation submitted in the assessment of the licence and all submissions received from the parties to the appeal, it was considered that an oral hearing was not necessary in order for the FAC to properly and fairly determine the appeals. In addressing the grounds of appeal, the FAC considered the requirements of the Habitats and EIA Directives, the completeness of the assessment of the licence application, and an examination of the procedures applied which led to the decision to grant the licence.

The FAC considered whether the procedures leading to the making of the decision to grant the licence for the proposed development were consistent with the EIA Directives. Regarding Environmental Impact Assessment (EIA) and related matters, the EU EIA Directive sets out in Annex I a list of projects for which EIA is mandatory. Annex II contains a list of projects for which member states must determine through thresholds or on a case by case basis (or both) whether or not EIA is required. The Irish Regulations, in relation to forestry licence applications, require mandatory EIA for applications relating to afforestation involving an area of more than 50 Hectares, the construction of a forest road of a length greater than 2000 metres and any afforestation or forest road below the specified parameters where the Minister considers such development would be likely to have significant effects on the environment. The proposal as described is for the afforestation of 5.26 hectares and is sub-threshold for the mandatory submission of an EIA report. In this case the FAC found that the DAFM assessed the proposal and considered the application across a range of criteria, including water, designated areas, landscape and cumulative effects, and determined that the project was not required to undergo the EIA process. However as stated in the DAFM SoF to the FAC, it is indicated that a significant error was made in relation to some of the EIA outputs on iFORIS as the percentage forest cover in the underlying waterbody was identified as 37% on 11th March 2022 and that this conflicts with the extent of forest cover as recorded in the in-combination statement where it is shown as 10%.

In relation to this matter the FAC examined the documentation in relation to screening for EIA wherein the DAFM recorded in the Assessment to Determine EIA Requirement that the current forest cover in the underlying waterbody is 37% and that this is at variance with the comparable figures as quoted in the In-Combination assessment report wherein it is recorded that the forest cover in the river sub-basin is approximately 10%. The FAC noted that the DAFM in its response to the appeal have pointed out that a significant error was made in relation to some of the EIA outputs on iFORIS in relation to percentage forest cover in the underlying and due to this error DAFM requests that this licence is remitted for a new EIA screening to be undertaken.

The FAC is of the view that the differences recorded for the forest cover in this instance represents a serious error and that the error was not addressed in the DAFMs deliberations, nor was it resolved in the record of the decision or in the statement in response to the appeals. The FAC has therefore concluded that the Assessment to Determine EIA should be undertaken again to address this matter.

The FAC considered the grounds of appeal that in the Assessment to Determine EIA Requirement reference is made to an absence of a response in relation to the approximate % of forest cover in the

applications townland 5 years ago. In noting this absence in the record, the FAC considered that this can be resolved when the new Assessment to Determine EIA is being undertaken.

In considering the grounds of appeal the FAC examined the Appropriate Assessment screening undertaken by the DAFM as it related to the proposed afforestation of 5.26 hectares. Having examined the documentation submitted, the FAC identified the same four Natura sites as the DAFM within 15 km from the proposal Ballykenny-Fisherstown Bog SPA 004101; Brown Bog SAC 002346; Clooneen Bog SAC 002348 and Lough Forbes Complex SAC 001818. The FAC is satisfied that there was no need to extend the radius in this case. The FAC considered the nature, scale and location of the proposal, the European sites identified, and their conservation objectives. The proposed works are located outside of any European site and the project site was the subject of a field inspection.

In the course of the AA process undertaken by DAFM, the Appropriate Assessment Screening Determination screened in two sites (Ballykenny-Fisherstown Bog SPA 004101 and Lough Forbes Complex SAC 001818) as a precaution. The Appropriate Assessment Determination (AAD) concluded that 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.

Specifically the AAD indicates in relation to Lough Forbes Complex SAC 001818, distance, absence of hydrological connection, location in a separate water catchment and the removal of a plot with potential source pathway receptor as reasons for screening out this site. The AAD, however, does not indicate a commentary or reasons in relation to Ballykenny-Fisherstown Bog SPA 004101 for being screened out. The FAC considers there is a lack of clarity in relation to the conclusions reached. This lack of clarity can be addressed in the new AA to be undertaken.

In relation to Ballykenny-Fisherstown Bog SPA 004101 the grounds of appeal contends that the Appropriate Assessment is flawed as it failed to consider loss of potential foraging habitat for Greenland White Fronted Geese (GWFG) and therefore there is no basis for indicating no impact arising from a loss of foraging habitat and a complete AA would address the issue of foraging habitat. The FAC examined the grounds as stated, the response made and the chronology of documentation submitted in the assessment of the licence application by DAFM. The FAC noted that revisions were made to the application and the proposal was re-evaluated in relation to the revisions and information submitted. The FAC noted the evidence presented in relation to documented presence and location of Greenland White Fronted Geese and the field examination of the site as a suitable foraging site for the species which determined the site is not a suitable foraging habitat and which are clearly stated in the section 4 of the AAD. The FAC noted that reference is made to the relevance of mitigations pertaining to this species outlined in the AAD and conditions of the licence but as already indicated there is no clear statement in the AAD (in particular in section 3 of the AAD) which leads to this finding.



The FAC considered the In Combination assessment as set out in the report dated 03/02/2022 wherein it sets out the In Combination statement of the DAFM in connection with the proposal. The FAC also considered that this report post dates the NIS as submitted by / on behalf of the applicant. 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. The FAC would consider this not to be in keeping with the requirements of the Forestry Regulations 2017 and Article 6(3) of the EU Habitats Directive. The FAC considers that this is an error in the processing of the application in so far as it relates to Appropriate Assessment.

In relation to referrals of the licence to statutory bodies and in particular the National Parks and Wildlife Service (NPWS) as raised in the grounds of appeal it is noted that the site is not within a Natura Site and no species of conservation interest was identified in the revised project area comprising five plots. DAFM in response to the grounds of appeal indicate that the Forest Service have agreed referral procedures with National Parks and Wildlife Service with mandatory referrals for afforestation where the project area or part thereof is within a SAC, SPA, National Park, NHA, pNHA or Nature Reserve or within a section of a Hen Harrier Ref Area (of High Likelihood of Nesting Areas, HLNAs) extending outside of the SPAs and that referrals in other circumstances are discretionary. The FAC notes this procedure and that the site is not an area of mandatory referral. The FAC also notes that that the current licence application and which is the subject of appeal, was assessed by an ecologist on behalf of the applicant and was also assessed by an ecologist working on behalf of DAFM. The FAC concluded that DAFM has not erred in the processing of the application as it relates to these grounds in the appeal.

In relation to the stated grounds of appeal and the impact on the landscape which is considered visually sensitive, reference is made to amenity designation of the current County Leitrim Development Plan, that the area already has considerable levels of forestry which could be considered excessive and that the biodiversity of the area will be adversely impacted upon. The FAC considered the reference in the grounds of appeal to discrepancies regarding amenity designations in the DAFM assessment of the licence. In this context the FAC noted that the appellant has not provided any evidence in relation to what the referenced discrepancies are. The FAC has, from an examination of current Leitrim County Development Plan designations, noted that the project is outside areas classified as high visual amenity or areas of outstanding natural beauty in Leitrim CDP 2015-21. The landscape within which the proposal is located is described as having a high capacity to accommodate forestry. The FAC also noted that, in the revised planting details, two of the plots were altered to become bio-plots which will provide for increased biodiversity and reduced visual impact. The FAC noted that there are site specific conditions included in the licence requiring that all existing trees and hedgerows within the site shall be retained, that five rows of mixed broadleaves shall be planted. The FAC also noted that an unplanted public road setback of a minimum width of 10 metres (as measured from the surfaced edge of the public road) is

stipulated as is a 10 metre wide strip of mixed broadleaves of native species suited to the immediate site together with the general adherence to Environmental Requirements for Afforestation. The FAC concluded that the DAFM had not erred in its processing of the application in this case as it relates to these grounds in the appeal.

In relation to impact on dwellings the FAC would accept that forestry could represent a change in the character of the receiving landscape and for residents living in close proximity of the project. The conditions of the licence do however provide for a setback with a minimum width of 60 metres from any identified dwelling which adheres to and is in accordance with Table 5 and Table 6 of the Environmental Requirements for Afforestation. The conditions of the licence also provide for broadleaf and native species planting at the edges which interface with adjoining properties. The FAC concluded that the DAFM had not erred in its processing of the application in this case as it relates to these grounds in the appeal.

In relation to the road network and the capacity of the road network to accommodate the proposal the FAC examined the documentation submitted in relation to this issue. Having considered these issues the FAC considers that the project will not generate traffic of a constant nature and that traffic generated will be intermittent in nature and confined largely to periods of thinning and felling and therefore will not significantly impact traffic flows. The FAC concluded that the DAFM had not erred in its processing of the application in this case as it relates to this ground of appeal.

In considering the appeals 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 errors was made in making the decision in this case. The FAC is, thus, setting aside and remitting the decision regarding licence CN86193 to the Minister, in line with Article 14B of the Agricultural 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 and to carry out a new Appropriate Assessment of the proposal itself and in combination with other plans or projects under Article 6(3) of the EU Habitats Directive, before a new decision is made.

Yours sincerely,

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Derek Daly On Behalf of the Forestry Appeals Committee