



25<sup>th</sup> November 2022

Subject: Appeal FAC 070/2022 in relation to licence GY10-FL0149

Dear

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

#### **Background**

A tree felling licence GY10-FL0149 for the thinning of forest on an area of 33.63 ha at Derrygoolin North and Toorleitra, Co. Galway was issued by the DAFM on 15<sup>th</sup> June 2022.

#### **Hearing**

Having regard to the particular circumstances of the appeal, the FAC considered that it was not necessary to conduct an oral hearing in order to properly and fairly determine the appeal. A hearing of appeal FAC 070/2022 was held remotely by the FAC on 19<sup>th</sup> October 2022. In attendance:

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

The FAC noted that following the notification of the hearing, and circulation of the documentation to the parties relating to same on 27<sup>th</sup> September 2022, a further submission was received on the 17<sup>th</sup> October 2022 from the applicant. This submission was circulated to the appellant and DAFM on the 18<sup>th</sup> October 2022 allowing a period within which any further observation / submission could be made to the FAC. No further submissions were received in this connection.

#### **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 GY10-FL0149. The reasons for this decision are set out hereunder.

## **Background**

The licence pertains to the thinning of forest on 33.63 ha at Derrygoolin North and Toorleitra, Co. Galway. The forest area to be thinned comprises three plots marked 1, 4 and 13 on the maps submitted with the application. The area to be thinned is currently composed of Sitka spruce (87%) with the balance being Japanese Larch. Plot 1 (28.26 ha) was stated to be planted in 1999, Plot 4 (4.39 ha) was stated to be planted in 1999 and Plot 13 (.99 ha) was stated to be planted in 1993. The application was accompanied by a location and felling(bio) map. The applicant's documentation (Appropriate Assessment Pre-Screening Report dated 4<sup>th</sup> February 2022) states that the project area lies in the River Sub-Basin BLEACH\_010, COOS\_010 and LOWER VILLAGE TRIB\_010. The underlying soil type is described in the DAFM AA report (4<sup>th</sup> May 2022) as being Blanket Peats and the slope is stated to be moderate.

The proposal was referred to the National Parks and Wildlife Service (NPWS) on 13<sup>th</sup> January 2020 who responded 24<sup>th</sup> February 2020. The NPWS response raised the potential disturbance of breeding Hen Harrier pairs depending on timing of operations, that the project area is within the Slieve Aughty Mountains Special Protection Area (SPA) (Site Code 004168) and is inside a known breeding zone (Higher Likelihood of Nesting Areas (HLNAs)) for Hen Harrier, that work should not be carried out between 1<sup>st</sup> of April and 15<sup>th</sup> August, that Hairy wood ant (*Formica lugubris*) nests are present in the locality, that damage to any possible nests should be avoided where possible, that invasive species if present should be managed appropriately as part of the forest management so as to avoid their spread and that forestry best practice should be followed during all phases of operations and onsite activities. Also attached with the NPWS response was an appendix containing more general points that are suggested to be of relevance and of assistance to DAFM in its consideration of the application.

## **Applicant's Natura Impact Statement (NIS)**

The applicant submitted a NIS dated 7<sup>th</sup> March 2022 described as being for 'thinning project GY10-FL0149 and GY10-FL0198, located at Derrygoolin North, Toorleitra and Loughatorick North, Co. Galway' combined with a screening document and a Harvest Plan (with accompanying map). It sets out the qualifications of those involved in its preparation and the Legal Framework for Appropriate Assessment. It deals with site specific description and project details for GY10-FL0149 (Thinning project) beginning at pages 10 and 11, it deals with Hydrology, Natura 2000 Sites, Land Use, and Downstream Hydrological Connectivity at pages 12, 13 and 14.

It states that the project involves thinning and that all harvesting operations, including thinnings, are carried out in accordance with the DAFM Standards for Felling and Restoration (2019). It states that thinning operations are carried out by specialised mechanical cut to length Harvesters and Forwarders which are used to extract the logs to the forest road and that thinning operations in conifer and broadleaf commercial species are similar in operation involving the initial cutting of lines followed by the removal of selected poorer quality trees. It states that the harvesting operator cuts and processes each tree to create a brash mat from the branches and tops of the harvested trees along the rack. It states that this brash mat protects the ground from the operation of the Harvester and Forwarder and that the rack and brash mat will be maintained for future thinning operations.

It sets out that silt traps are installed in relevant watercourses to protect against potential runoff into aquatic zones and that any temporary water crossing points (as per DAFM 2019 guidance) are removed when the operations are finished. The NIS provides details relating to forest operations to include, pre-commencement meetings, site monitoring, contingency planning, chemical use, and contractor training.

The NIS at section 2 examines the two screened in sites (Lough Derg (Shannon) SPA 004058, and Slieve Aughty Mountains SPA 004168) as identified in the applicant's pre-screening report together with their Qualifying Interest(s) (if SAC) / Special Conservation Interest(s) (if SPA) as listed. The NIS at section 3 sets out a proposed mitigation for the project. At section 4 the NIS deals with 'Residuals' and at section 5 it sets out an In-Combination assessment and statement.

#### **Appropriate Assessment (AA) Screening and Determination dated 4<sup>th</sup> May 2022**

The DAFM undertook and documented a screening for Appropriate Assessment (AA) dated 4<sup>th</sup> May 2022 which examines eleven European Sites together with their qualifying / special conservation interests, one of the sites (Slieve Aughty Mountains SPA IE0004168) overlaps with the project area, and ten others are within 15km distance, the eleven sites are as follows;

- Slieve Aughty Mountains SPA IE0004168, (overlaps with project)
- Loughatorick South Bog SAC IE0000308
- Pollagoona Bog SAC IE0002126
- Derrycrag Wood Nature Reserve SAC IE0000261
- Pollnacknockaun Wood Nature Reserve SAC IE0000319
- Lough Derg (Shannon) SPA IE0004058
- Cloonmoylan Bog SAC IE0000248
- Rosturra Wood SAC IE0001313
- Lough Derg, North-East Shore SAC IE0002241
- Barroughter Bog SAC IE0000231
- Sonnagh Bog SAC IE0001913

The Slieve Aughty Mountains SPA, Pollnacknockaun Wood Nature Reserve SAC, Lough Derg (Shannon) SPA and Lough Derg, North-East Shore SAC were screened in. All other sites (seven) were screened out and the project proceeded to AA stage 2. The reasons for the screening conclusions reached for each of the European sites examined are recorded in the documentation on file.

#### **Appropriate Assessment Determination (AAD) dated 18<sup>th</sup> May 2022**

An AAD completed by Niall Phelan on behalf of the Minister and dated 18<sup>th</sup> May 2022 is to be found on file. In relation to screened out European sites the AAD states that in concluding the AA screening, the Minister has determined that there is no likelihood of the Thinning project GY10-FL0149 having any significant effect, either individually or in combination with other plans or projects, on any of the following European site(s), in view of their conservation objective, for the reasons set out:

- Loughatorick South Bog SAC IE0000308: Due to the absence of a direct upstream hydrological connection, and subsequent lack of any pathway, hydrological or otherwise.
- Pollagoona Bog SAC IE0002126: Due to the absence of a direct upstream hydrological connection, and subsequent lack of any pathway, hydrological or otherwise.
- Derrycrag Wood Nature Reserve SAC IE0000261: Due to the absence of a direct upstream hydrological connection, and subsequent lack of any pathway, hydrological or otherwise.
- Cloonmoylan Bog SAC IE0000248: Due to the absence of a direct upstream hydrological connection, and subsequent lack of any pathway, hydrological or otherwise.
- Rosturra Wood SAC IE0001313: Due to the absence of a direct upstream hydrological connection, and subsequent lack of any pathway, hydrological or otherwise.
- Barroughter Bog SAC IE0000231: Due to the absence of a direct upstream hydrological connection, and subsequent lack of any pathway, hydrological or otherwise.
- Sonnagh Bog SAC IE0001913: Due to 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 pathway, hydrological or otherwise.
- Lough Derg, North-East Shore SAC IE0002241: Due to the lack of a sufficient pathway of impact to sensitive features of the European site, hydrologically or otherwise.
- Pollnacknockaun Wood Nature Reserve SAC IE0000319: Due to the absence of a direct upstream hydrological connection, and subsequent lack of any pathway, hydrological or otherwise.

The report also sets out that in concluding the AA screening, the Minister has determined that there is the likelihood of thinning project GY10-FL0149 having a significant effect, either individually or in combination with other plans and projects, on the following European Site(s), for the reasons described, in view of best scientific knowledge and in view of the conservation objectives of the European Site(s).

- Slieve Aughty Mountains SPA IE0004168: Possible effect due to the location of the project within the Natura site.
- Lough Derg (Shannon) SPA IE0004058: Possible effect due to the direct hydrological connectivity that exists between the project area and this SPA.

The AAD report sets out that the Minister determined that an Appropriate Assessment (AA) of the activity proposed under GY10-FL0149 was required in relation to the above 'screened in' European sites. The AAD report states that for this reason, the applicant submitted a Natura Impact Statement (completed 07/03/2022) to facilitate the Minister carrying out an AA. Niall Phelan, Principal Consultant, Environmental Facilitation Ltd, acting on behalf of the DAFM, subsequently evaluated the submitted NIS, defined as "a report comprising the scientific examination of a plan or project and the relevant European Site or European Sites, to identify and characterise any possible implications of the plan or project individually or in combination with other plans or projects in view of the conservation objectives of the site or sites, and any further information including, but not limited to, any plans, maps or drawings, scientific information or data required to enable the carrying out of an Appropriate Assessment".

In undertaking the Appropriate Assessment of the likely significant implications and effects of the activity on European Sites, the report states that the following were taken into account:

- the initial application GY10-FL0149, including all information submitted by the applicant, information available via iFORIS (including its GIS MapViewer), responses from referral bodies and submissions from 3rd parties.
- any subsequent supporting documentation received from the applicant.
- any other plan or project that may, in combination with the plan or project under consideration, adversely affect the integrity of a European Site.
- if appropriate, any written submission or observation made by a consultation body or the public to the Minister in relation to the application under Part 6.
- any Natura Impact Statement provided by the applicant on foot of a request by the Minister, or otherwise.
- any supplementary information furnished in relation to any such report or statement.
- if appropriate, any further information sought by the Minister and furnished by the applicant in relation to a Natura Impact Statement.
- any information or advice obtained by the Minister.
- any other relevant information.

The AAD report records that the information provided in the NIS was sufficient to derive appropriate conditions for a determination.

The AAD report sets out the Appropriate Assessment Determination and the mitigations required which are to be attached as conditions to any licence issued for the project. In concluding the AAD report sets out that,

*'The basis for this AA Determination is as follows: This WD4 33.64ha thinning project is located on Blanket Peat and lies on a moderate slope. The project area (PA) is spread across 3 sub compartments planted between 1993-1999. An area of open space (~ 0.90 ha) is adjacent to the northwest boundary. The site is located entirely within the Slieve Aughty Mountains SPA, where Hen Harrier (HH) is a Special Conservation Interest feature. As the PA lies within a High Likelihood Nesting Area for HH, measures to mitigate disturbance impacts to nesting HH have been stipulated. There are 6 relevant watercourses within/adjacent to the site that drain the project into either the Bleach stream or the Lower Village Trib stream. The Bleach stream flows northeast to northwest through the west portion of the project site for ~ 350 m, leaves the project site before joining Lough Atorick and subsequently Lough Graney and Lough Derg. Therefore, providing a hydrological connection to the Lough Derg (Shannon) SPA via the BLEACH\_010 sub basin in good ecological status, at risk1. Appropriate aquatic zone and watercourse measure protections have been set out and good practice aquatic measures for the relevant designated features. The above conditions in combination, along with strict adherence to the guidance cited, will eliminate pathways of impact of significance to European sites.'*

### **The Licence**

The licence issued on 15<sup>th</sup> June 2022. It is subject to 11 conditions. Condition number 8 requires compliance with mitigation measures as set out in the AAD.

### **The Appeal**

There is a single appeal against the decision to grant the licence. The grounds of appeal (in summary) are as follows:

- A contention that non-publication of the information described as '*the initial application GY10-FL0149, including all information submitted by the applicant, information available via Iforis (including its GIS Map Viewer)*' makes it impossible to make a judgement as to the presence of lacunas
- References that the requirement of Article 6.3 is to do an Appropriate Assessment not write conditions
- Contends that it is not clear if there is existing scrub and protect (sic) existing habitat within the project
- Contends that mitigation A is not clear and concise
- In relation to mitigation B queries if there is a possibility of missed watercourses while referencing CJEU case 258/11
- Contends that the non-detailing of zones in Mitigation C & D is a lacuna
- Queries the use of 'if' when a watercourse has a preferential flow path in relation to mitigation E
- Contends that Mitigation F is not clear and concise
- Contends that Mitigation G means that the Appropriate Assessment has been done without proper information
- Contends that the fact that the condition (H) '*are to be planned*' shows that they have not been
- Contends that mitigation J and K are contradictory
- In relation to mitigation L grounds contend that it is not possible to assess something that doesn't exist
- Contends that there is 'nothing but doubts' in the Appropriate Assessment
- Contends that there is no evidence available (to the Appellant) that the afforestation licence was granted according to the requirements of the Habitats and Birds Directives.

### **DAFM Statement of Facts**

The DAFM provided a statement to the FAC relating to the appeal which was provided to the parties. The statement provided an overview of the processing of the application and the steps and dates involved. It is submitted that the application was advertised on 20/11/2019. In response to FAC 070/2022, it is submitted that DAFM records show that the felling licence application for GY10-FL0149 was uploaded to the Forest Licence Viewer on the 4/3/2022, that the NIS was uploaded on the 24/3/2022 in advance of the licence issue date of the 15/6/2022. It is submitted that an Appropriate Assessment was undertaken on the felling licence application GY10-FL0149 prior to the licence being issued. It submits that the application itself included an inventory of the stand to be felled, species, year planted, average tree size

and yield class and that a pre-screening report, location maps of the harvest site and a shapefile with the digitised area of the project were also provided. The shapefile, it submits, allows spatial analysis by GIS to be carried out in relation to the harvest site and surrounding environmental layers such as SPAs, SACs, Hen Harrier designations and sub catchment boundaries and rivers. It submits that the licence application undergoes screening for AA by a Forestry Inspector which starts with the GIS analysis mentioned previously and preparation of an 'In-combination Report' which looks at other developments and activities in the vicinity, including forestry operations. This screening exercise, it submits, also looks at the documentation submitted by the applicant (Pre-Screening Report, 'In Combination' analysis and the NIS) and determines whether European Sites are either 'screened in' or 'screened out' based on hydrologically connectivity to European Sites (SACs) and separation distances for birds (SPAs). It submits that Hydrological connectivity assessment takes into account all existing aquatic zones and relevant watercourses; that it uses the EPA GIS tool which includes catchment boundaries as well as rivers. It is submitted that the AA screening exercise deemed that GY10-FL0149 was screened in for the following European Sites,

- Slieve Aughty Mountains SPA IE0004168,
- Pollnacknockaun Wood Nature Reserve SAC IE0000319,
- Lough Derg (Shannon) SPA IE0004058 and
- Lough Derg, North-East Shore SAC IE0002241.

The statement further submits that having screened in GY10-FL0149 the Department proceeded to second stage AA and that from this exercise an AA Determination was prepared setting out multiple mitigations arising from this exercise, on which the licence was based. It submits that these mitigations were targeted at protecting European Sites as well as water quality associated with this project area. The statement submits that the site was subject to a field inspection which confirmed small open spaces along with undeveloped Japanese larch within the project area and that the condition to retain scrub and protect existing habitat was included to protect this area. It is stated that information about open space area was included in NIS and that DAFMs 'Standards for Felling and Reforestation' policy document sets out the requirement to monitor water quality throughout operations and to keep records (Section 12 and Appendix E). The statement submits that records from the nearest meteorological whether (sic) station can be used to determine whether rainfall has reached 25mm in a given day. It is submitted that all documents are examined by a DAFM forester and an ecologist, and in the case of GY10-FL0149 the site was visited by a Department Forestry Inspector to check the accuracy of the harvest plan map with no discrepancies being identified. It submits that despite the thorough nature of the work that goes into issuing a felling licence and despite best efforts there is always a possibility that a relevant watercourse could be missed particularly during periods of very dry weather, that relevant watercourses are very often active only in certain periods of the year and that the condition to update the harvest plan map and update the machine operators is designed to address this risk. It is submitted that all aquatic zones and relevant watercourses that exist on the site have been detailed on the harvest plan map. It submits that the following information was available to the Department to assist in making its final decision on whether to issue a felling licence for GY10-FL0149,

- a) Licence application including inventory of site
- b) Pre-screening report including Coillte in combination report and subsequent statement
- c) Natura impact statement
- d) Harvest Plan map
- e) Coillte shapefiles to allows DAFM to carry out GIS analysis against multiple data sources including EPA sub catchment boundaries rivers and European Sites
- f) NPWS submission
- g) DAFM AA screening determination
- h) DAFM's own in combination report
- i) DAFM's final AA Determination

It submits that this list demonstrates that DAFM had all the relevant information available in order to make the correct decision on this licence.

As noted the Applicant made a submission in response to the appeal outlining the application information and submitting their operational procedures. It is submitted that open spaces and relevant watercourses were mapped on the application Harvest Plan. This submission was provided to the other parties.

#### **Consideration by the FAC**

The appellant contends that the non-publication of the information described as *'the initial application GY10-FL0149, including all information submitted by the applicant, information available via Iforis (including its GIS Map Viewer)'* makes it impossible to make a judgement as to the presence of lacunas. The DAFM in its statement set out the range of information supplied by the applicant as uploaded to the Forestry Licence Viewer. This information, the FAC notes, includes the felling licence application for GY10-FL0149 (dated 18/11/2019), and the NIS (uploaded to the Forest Licence Viewer on the 24/3/2022). The FAC notes the DAFM statement submission that the licence application itself included an inventory of the stand to be felled, species, year planted, average tree size and yield class and that a pre-screening report, location maps of the harvest site and a shapefile with the digitised area of the project were also provided. The FAC also noted the DAFM submission that the shapefile as included with the application enables spatial analysis by GIS to be carried out in relation to the harvest site and surrounding environmental layers such as SPAs, SACs, Hen Harrier designations and sub catchment boundaries and rivers. The FAC also notes that in addition to the above information the Forestry Licence Viewer has the following uploaded to it in relation to licence GY10-FL0149, a submission (redacted to obscure the authors identity) dated 11/12/2019, the NPWS referral letter and response, an Appropriate Assessment Pre-Screening Report dated 04/02/2022 from the applicant, an In-combination report for Thinning project GY10-FL0149 dated 04/05/2022, an Appropriate Assessment Screening Report & Determination for Thinning project GY10-FL0149 dated 04/05/2022, an Appropriate Assessment Determination made by the Minister for Agriculture, Food & the Marine for Thinning project, GY10-FL0149 dated 18/05/2022, details of the licence as issued, and a correspondence confirming that an appeal had been submitted.

The FAC considered that the DAFM had sufficient information available to it to inform the decision making process in this case and that the information as uploaded to the Forestry Licence Viewer was sufficient to inform the general public as to the content of the application and furthermore that the said information



as uploaded to the Forestry Licence Viewer was sufficient to enable analysis, including GIS analysis, to determine if lacunae existed in the process. The FAC noted that some of the information employed related to the location of Hen Harrier nests. The FAC is of the view that publishing the location of nests of a protected species would not be appropriate and would have the potential to threaten the protection of the species. The measures stated are clear in their purpose and relate to the timing of operations outside of the breeding season to avoid disturbance and the mature forest itself is not suitable habitat. The FAC considered that the DAFM had not erred in its processing of the application in so far as these grounds of appeal are concerned.

The appellant contends in the grounds that it is not clear if there is existing scrub and protect (sic) existing habitat within the project. The FAC notes the DAFM statement submission wherein it sets out that the DAFM field inspection of the project confirmed small open spaces along with undeveloped Japanese larch within the project area and that the condition to retain scrub and protect existing habitat was included to protect this area. It also sets out that Information about open space area was included in the applicants NIS. The FAC considers that the inclusion of the condition requiring the retention of existing scrub and the protection existing open habitat within the project, to maximise opportunities for prey species is reflective of good practice, whereby the findings of a field inspection were addressed and provided for in the conditions of licence. This measure would be in addition to the primary, temporal condition. The FAC considered that the DAFM had not erred in its processing of the application in so far as this ground of appeal is concerned.

The FAC considered whether the proposed development should have been addressed in the context of the EIA Directive. In considering this aspect, the FAC notes that the EU EIA Directive sets out, in Annex I a list of projects for which EIA is mandatory. Annex II contains a list of projects for which member states must determine, through thresholds or on a case by case basis (or both), whether or not EIA is required. Neither afforestation nor deforestation is referred to in Annex I. Annex II contains a class of project specified as "initial afforestation and deforestation for the purpose of conversion to another type of land use" (Class 1 (d) of Annex II). 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. The thinning / felling of trees, as part of a forestry operation, with no change in land use, does not fall within the classes referred to in the Directive, and is similarly not covered by the Irish regulations (S.I. 191 of 2017). The Forestry Act 2014 defines a forest as land under trees with a minimum area of 0.1 ha and tree crown cover of more than twenty per cent of the total area or the potential to achieve this cover at maturity. The decision under appeal relates to a licence for the thinning of forest on a stated area of 33.63 hectares. The FAC does not consider that the proposal comprises deforestation for the purposes of land use change and neither that it falls within the classes included in the Annexes of the EIA Directive or considered for EIA in Irish Regulations. As such, the FAC was not satisfied that an error had occurred in the making of the decision where no screening or EIA had been undertaken.

The FAC considered the grounds in the appeal in relation to water quality and related matters including the contention in relation to mitigation B wherein the grounds query if there is a possibility of missed watercourses on the project lands. In this context, the FAC noted the submission in the DAFM statement to it, wherein it states, that DAFMs 'Standards for Felling and Reforestation' policy document sets out the requirement to monitor water quality throughout operations and to keep records and that records from the nearest meteorological weather station can be used to determine whether rainfall has reached 25mm in a given day. The FAC considered the DAFM submission, wherein it sets out, that the applicants' foresters and ecologists prepare the application and NIS as well as the detailed harvest plan setting out the location of aquatic zones and relevant water courses and that all documents are then examined by a DAFM forester and an ecologist. The FAC further considered the requirements of the Standards for Felling and Reforestation (2019) regarding monitoring and record keeping. DAFM submit that, in the case of GY10-FL0149, the site was visited by a Department Forestry Inspector to check the accuracy of the harvest plan map and that no discrepancies were identified. The FAC noted the DAFM submission that despite the thorough nature of the work that goes into issuing a felling licence and despite best efforts there is always a possibility that a relevant watercourse could be missed particularly during periods of very dry weather in that relevant watercourses are very often active only in certain periods of the year and that the condition to update the harvest plan map and update the machine operators is designed to address this risk. The DAFM submission sets out that all aquatic zones and relevant watercourses that exist on the site have been detailed on the harvest plan map. The FAC does not consider that the grounds of appeal engage with the nature, scale and location of the proposal or submit specific concerns regarding effects. The measures questioned in the grounds of appeal relate to the protection of water quality as there is a hydrological connection to Lough Derg (Shannon) SPA which lies over 7 km in direct distance and over 9 km in hydrological distance. As noted the effects that might occur would be indirect and related to the hydrological connection with the site. There are twenty-one conditions outlining measures related to water quality which are primarily of a preventative nature and generally relate to good practice measures.

In relation to measures J and K as identified in the grounds and the suggestion that these are contradictory, the FAC does not consider the measures to relate to the same matters or to be contradictory. Employing brash generated during harvesting as a mat on which machines travel is a very common soil protection measure but it would not be good practice to create such mats or to delimb within setbacks. At the same time brash may fall into setbacks during operations and it is good practice that this be removed and that the conditions address this potential event even if such an event may in many situations be inconsequential.

The FAC finds that the project lands in this case lie within the LOWER VILLAGE TRIB\_010 and BLEACH\_010 River Sub-Basin and adjoins the COOS\_010 River sub basin. The LOWER VILLAGE TRIB\_010 and BLEACH\_010 both have a good status assigned for the 2013-18 assessment period while the COOS\_010 has a poor status assigned to it for the same assessment period. A section of the Bleach 10 waterbody flows northerly through the western section of the lands as mapped in the application and NIS. As noted, this waterbody has been assigned a Good status by the EPA and further is considered to be Not at Risk in relation to the objectives of the Water Framework Directive. As mapped, relevant watercourses flow from further south in the forest towards the waterbody and a crossing point is located on the relevant

watercourse. A second relevant watercourse flows northerly from the lands into the Lower Village Trib 10 subbasin with the mapped waterbody over 1,000 metres from the lands. The southeastern tip of the forest overlaps with the Coos 10 subbasin and no watercourses are situated at this point. The proposal is for the thinning of the forest without clearfelling over a limited time period. Based on the information available to it and having regard to the scale, nature, location and the conditions under which operations would be undertaken, the FAC is not satisfied that the proposal poses a significant threat to water quality. The FAC considered that DAFM has not erred in the making of the decision in this case, as it relates to the protection of water quality, the requirements of the Water Framework Directive and related matters as included in the grounds of appeal.

The FAC considered the grounds of appeal relating to the Appropriate Assessment and related matters and considered the procedures undertaken by the DAFM in respect of the provisions of the Habitats Directive. The FAC finds that the DAFM considered the Natura Impact Statement (NIS) as submitted by the applicant (as referenced earlier in this letter) and indicated that the information provided in the application and NIS was sufficient to derive appropriate conditions for a determination. The FAC also noted that the lands were field inspected to verify the details of the application and proposal. The FAC finds that the said NIS examined the two screened in sites (Lough Derg (Shannon) SPA 004058, and Slieve Aughty Mountains SPA 004168) as identified in the applicant's pre-screening report together with their Qualifying Interest(s) (if SAC) / Special Conservation Interest(s) (if SPA) as listed.

The FAC finds that a DAFM AA screening report dated 4th May 2022 which examines eleven European Sites together with their qualifying / special conservation interests (one of the which - Slieve Aughty Mountains SPA IE0004168 overlaps with the project area) screens in four sites (Slieve Aughty Mountains SPA, Pollnaknockaun Wood Nature Reserve SAC, Lough Derg (Shannon) SPA and Lough Derg, North-East Shore SAC) to proceed to stage 2 Appropriate Assessment. The FAC also finds that a DAFM Appropriate Assessment Determination (AAD) report dated 18<sup>th</sup> May 2022 records two of the sites (Pollnaknockaun Wood Nature Reserve SAC and Lough Derg, North-East Shore SAC) as being screened out while these same two sites were screened in as per the DAFM Appropriate Assessment screening report of 4<sup>th</sup> May 2022. The FAC noted that the reasons for the screening out of these two sites as shown in the AAD report is;

- In relation to Pollnaknockaun Wood Nature Reserve SAC - *'Due to the absence of a direct upstream hydrological connection, and subsequent lack of any pathway, hydrological or otherwise'*.
- In relation to Lough Derg, North-East Shore SAC - *'Due to the lack of a sufficient pathway of impact to sensitive features of the European site, hydrologically or otherwise'*.

The FAC notes that in the section headed *Screening for Appropriate Assessment* in the AAD report it references that *'the Minister, as the relevant public authority, undertook a screening for Appropriate Assessment to determine if the activity, individually or in combination with other plans or projects, is likely to have a significant effect on any European Site, in view of best scientific knowledge and the conservation objectives of the European Site. In this context, particular attention was paid to the following European site(s)'*. The FAC considered that this indicates that the AAD relies on the DAFM AA screening without referencing that the said DAFM AA screening had screened in four sites in total as compared to two being considered as screened in as per the AAD. Neither has the FAC found evidence on file that the relevant qualifying / special conservation interests of the two sites as screened in as per the DAFM AA screening

and considered as screened out as per the DAFM AAD (ie Pollnacknockaun Wood Nature Reserve SAC and to Lough Derg, North-East Shore SAC) were considered in detail as would be the case as normally found at AA screening stage. The FAC notes that the DAFM statement provided to it referred to four sites being screened in at AA screening stage. The FAC also noted that the DAFM AA screening post-dated the applicants NIS and therefore the FAC expects, that unless expressly stated, that the DAFM AAD relied on the screening undertaken in the most recent report which in this case was the DAFM AA screening. The FAC considered that in that context the DAFM has erred in its processing of the licence in so far as Appropriate Assessment is concerned.

Furthermore, the FAC noted that in relation to the sites which the DAFM had “screened out” in the screening report of 4<sup>th</sup> May 2022 the following conclusion was made,

*Furthermore, as set out in the in-combination assessment attached to this AA Screening, as there is no likelihood of the project itself (i.e. individually) having a significant effect on this European site, there is no potential for it to contribute to any cumulative adverse effects on the site, when considered in-combination with other plans and projects.*

The FAC would understand that the consideration of other plans and projects should take place as part of the process to ascertain whether the project, either individually or in-combination with other plans or projects, is likely to have a significant effect on a European site and in the Appropriate Assessment of the implications of the project and such effects on the European site, having regard to the conservation objectives of the site concerned. The FAC considers the conclusion stated above to be an error as it suggests that the decision maker has not considered effects that might arise from the proposal which themselves may not be significant but which in-combination with other plans and projects could result in a significant effect on a European site. The FAC would also understand that after concluding that the project itself would not have a significant effect on a specific European site, the DAFM should also consider other plans and projects and determine whether the project in-combination with other plans could have a significant effect.

In considering the appeal in this case the FAC had regard to the record of the decision, the submitted grounds of appeal, and all submissions received. The FAC concluded that a serious or significant error or series of errors were made in the making of the decision in respect of licence GY10-FL0149. The FAC is therefore setting aside and remitting the decision regarding licence GY10-FL0149 to the Minister to carry out a new screening and 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,

Seamus Neely, On Behalf of the Forestry Appeals Committee