



21st August 2023

Subject: Appeal FAC 090/2022 against licence decision CN89234

Dear

I refer to the appeal to the Forestry Appeals Committee (FAC) in relation to the above licence issued 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.

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 090/2022 was held remotely by the FAC on 20th April 2023. In attendance:

FAC Members: Mr. Seamus Neely (Chairperson), Mr. Derek Daly, Mr. Donal Maguire & Mr. Luke Sweetman.
Secretary to the FAC: Ms. Vanessa Healy.

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 allow the appeal and set aside the decision of the MAFM to grant the licence CN89234. The reasons for this decision are set out hereunder.

Background

The licence decision under appeal pertains to the afforestation of 7.81 ha in Tullynascreen, Co. Leitrim. The application was recorded in the DAFM statement to the FAC as being submitted on 9th July 2021. At that point the application was for an area of 10.34 ha (as per Pre-Approval Submission Report on file). It comprised 5 plots (Plot 1 GPC 3 8.58 ha, Plot 2 GPC 3 0.25 ha, Plot 3 GPC 3 0.62 ha, Plot 4 GPC 3 0.71 ha, and Plot 5 GPC 3 0.18 ha.) This plot composition appears to accord with a BioMap on file dated 08/07/2021 marked on the FLV as 10/08/2021 and the copy site notice marked as erected on 28/07/2021. A document titled on the FLV legend as 'Species Map' would appear to be a copy of an objection to the proposal which has been labelled in error.

The DAFM issued a letter dated 01/11/2021 to the applicant indicating that in order to process the application further it was necessary to provide a revised planting area and Bio map. Subsequently a revised BioMap and species map (both dated 07/12/2021) were submitted for a six plot configuration for a total area of 7.81 ha and this is the proposal that the licence approval issued for. It would seem that these revised maps, the correspondence that issued to the applicant inviting them, and the revised site notice copy were not uploaded to the FLV until 23/02/2023 which considerably post-dated the issue of the licence which occurred on 15/07/2022.

The DAFM's Site Details Report describes the land as being enclosed agricultural land with mineral and peat soil and current vegetation cover of grass/rush. The site is described as moderately exposed with a north/east aspect and that there is adequate site access. The Appropriate Assessment Screening Determination (AASD) report on file states that the elevation is 150-160m with a 'gentle to moderate' slope ca.15%. The AASD also states that there is '*some flood risk noted from IFORIS, though it is conflicted (2022), up to 8m in plots 1, 5 and 6 along aquatic zone (likely the steep sided banks only) with a fluvial indicative 0.1-1% up to 20m in plot 6 (Source: OPW Flood Hazard layers, iFORIS)*'. The proposal as approved is comprised of six plots, four of which are Bio plots totalling 1.06 ha. Plot 2 is 6.34 ha of GPC3 Sitka spruce with ADB, and Plot 6 is GPC10 Native Woodland. The proposal is circa 9.5km south-east of Lough Gill and is less than 2km from the Sligo border. According to FLV & EPA imagery, the site is bounded to the east by mature forestry which received a clearfelling licence in February 2021. The proposal is in the Killanummery_010 River Sub-Basin. Catchments.ie shows the Killanummery_010 river waterbody currently has 'Good' status (assessed by monitoring) and 'Not at Risk' for the 2016-2021 period, up from 'Poor' and 'At Risk' from 2013-2018 period. The revised biodiversity map shows the public road, utilized buildings, relevant watercourses, aquatic zones, watercourse setback, access point and the location of the site notice. Plot numbers and boundaries are also shown on the map.

An Appropriate Assessment Screening Report (AASR), completed by the District Inspector (DI), which shows a date of 15/07/2022 and a 'Date Inspection Certified' as 13/07/2022 is to be found on file. This AASR examines seven sites (Boleybrack Mountain SAC 002032, Bricklieve Mountains and Keishcorran SAC 001656, Lough Arrow SAC 001673, Lough Arrow SPA 004050, Lough Gill SAC 001976, Union Wood SAC 000638 and Unshin River SAC 001898). It screens out all seven sites and concludes that there is no likelihood of a significant effect on any European site, and that Appropriate Assessment not required. An Appropriate Assessment Determination Report (AASD) on file dated 25/04/2022 and completed by a Consultant Ecologist includes an expert review of the DI's AASR which agrees to screen out six sites and screens in Lough Gill SAC due to "direct downstream hydrological connection via source-pathway receptor Killanummery_010 to Killanummery_020 5.2km downstream". The AASD includes two additional sites for screening that were not examined in the DI's AASR (Cummeen Strand, Drumcliff Bay (Sligo Bay) SAC & Cummeen Strand SPA) These are outside a 15km radius of the project area but are hydrologically connected and are screened in due to "potential impact to aquatic estuarine habitat and species". The project proceeded to Appropriate Assessment stage 2 for the three screened in sites (Lough Gill SAC 001976, Cummeen Strand, Drumcliff Bay (Sligo Bay) SAC 000627 and Cummeen Strand SPA 004035).

An Appropriate Assessment Report as completed by a Consultant Ecologist and dated 25/04/2022 is to be found on file. It considers the Qualifying Interests of the three screened-in sites, their Conservation Objectives, the potential for adverse impact, and prescribes mitigation measures where required. In Section 4 it lists the mitigation measures to be attached as licence conditions which include measures protecting water quality, biosecurity, Otter, and Badgers. The Mitigation listed is stated to reflect the “(i) the slope leading to the aquatic zone; (ii) the peat soils; and (iii) the direct hydrological connection to a high-status waterbody (Killanummery_020) and the current poor status of the Killanummery_010. It states that Plot 2 (GPC3) will have 20m setbacks with 10 rows of pit planted broadleaves due to peat soils and slight flood risk. In Section 6 in relation to In-Combination Effects it concludes that as there will be no individual effect on screened-in European sites, there is no potential to contribute to an in-combination effect. There is on file an Appropriate Assessment Determination (AAD) dated 28/06/2022 as prepared by a consultant Ecologist. It is marked as being made by the MAFM, for afforestation project CN89234, located at Tullynascreen, Co. Leitrim.

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 that the application should not be subject to the EIA process. The licence was issued on 15/07/2022 subject to conditions. These include a requirement to adhere to the mitigation measures set out in the Appropriate Assessment Determination, dated 28/06/2022 (which was said to be attached to the approval), a requirement to plant an undulating band 5 to 8 rows of mixed native broadleaf species suited to the immediate site along the edge of the southern and western boundary of plot 2, broadleaves are to be protected from grazing with adequate fencing and/or tree guards as necessary to ensure establishment and a requirement to consult with Leitrim County Council prior to commencement of any work.

Referrals and Submissions

The DAFM referred the application to An Taisce, the National Parks & Wildlife Service (NPWS), Leitrim Co. Council, and the Forest Service Archaeology Unit. An Taisce responded by correspondence dated 08/03/22 and raised concerns regarding EIS under the EIA Directive and the Forest Consent Regulations 2010 (citing that the combined area of the proposed plot with existing forestry brings it very close to the 50 hectare threshold and so should trigger a sub-threshold EIA), Water Quality, (notes ‘Poor’ status of KILLANUMMERY_010 and points out that peaty soils with a depth of over 30 cm peat have a particular risk of nutrient release during afforestation activities as the peat is easily eroded, and nutrients can leach from the forested area), High Nature Value Farming – citing that Article 6 of EU regulation No 807/2014 of 11/03/2014 (supplementing Regulation (EU) No 1305/2013) of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) states that minimum environmental requirements with which the afforestation of agricultural land must comply should be laid down ensuring that no inappropriate afforestation of sensitive habitats including areas under high nature value farming takes place and that the need for resilience to climate change is taken into account. The submission suggests that special attention should be paid to specific environmental needs for particular sites such as the prevention of soil erosion and that more stringent rules should be provided for afforestation operations leading to the creation of larger forests in order to

take into account the impact of scale of those operations on the ecosystems and to ensure that they comply with the objectives of the Green Infrastructure Strategy (1) and new EU Forest Strategy (2).

The NPWS indicated that it had no comment to make on this application and attached an appendix containing more general points of relevance. The Leitrim Co. Council response which was undated and shown on the FLV as 03/03/22 states that the Planning Authority has no objection to the proposed afforestation subject to conditions. The Council highlighted AA/EIA screening requirements and made suggestions for inclusion as licence conditions. These included engagement with the District Engineer's Office prior to commencement of works. The DAFM Archaeology Unit suggested conditions for inclusion in the licence. There are three submissions made on the application including from the appellant.

Appeal

There is one third party appeal against the decision and the full grounds of appeal and submissions received by the FAC have been provided to all the 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. The Appellant requested an oral hearing of the appeal, the full grounds of which are on file. Below is a summary of the grounds of FAC 090/2022.

- Undue process submitting an untimely publication of decision, citing approval issue on 15/07/2022 and made known to the public on 18/07/2022 and that the erection of the site notice has not been carried out in compliance with the Forestry Regulations.
- That licence condition 2 cannot be understood by the layperson citing inability to access documentation.
- That licence conditions are not consistent with the reason for the condition.
- That no reason is given for a licence condition.
- That access is not adequately considered citing that the whole project must be considered, and that the Local Road network is not suitable for eventual timber extraction.
- Application issues in relation to,
 - Area – submitting that application received by DAFM 09/07/21 and published twice for public consultation on 16/08/21 & 15/12/21 with 2 different areas, that Pre-approval submission (application) and Site notice state 10.34 ha, that the Site Details, Pre-Approval, and Licence approval state 7.81 ha and that there are no published documents to account for this material change to the application.
 - ABE – submitting no justification that selected areas are best for this purpose as required by “the standards”.
 - Woody Weed Removal – submitting lack of details in the proposal and that it should be confirmed that none will be removed.
- Lack of reasoning for EIA screening determination,
 - Submits that the DAFM assessment for cumulative impact is flawed,
 - Contends that the DAFM assessment of the project does not show the lands to be other than High Nature Value Farmlands,

- Inadequate hedgerow setback citing that BIOFOREST indicates 7m minimum required,
 - Matters relating to Article 12 of Habitats Directive (Annex IV Species) submitting that it is separate to AA procedure in Article 6(3),
 - Submits an inadequate protection of protected species (Hen Harrier),
 - Queries how the DAFM has determined the landscape impact of the project,
 - Water quality – submits lack of evidence for guidelines and AA mitigation,
 - Inappropriate planting of peat soils – submits lack of emissions data (as required by EIA Directive),
 - Safety - highlights Co. Council's safety concerns in engineering report,
 - Recreation, Social and Cultural factors.
- That the Appropriate Assessment is flawed.
 - That there is a chronological error in the AA process.
 - That there is no evidence that the An Taisce submission / response was adequately considered.
 - That the operability of the site is questionable when archaeological conditions applied.
 - Submission in relation to 'The Right Tree in the Right Place for the Right Reasons'.

The DAFM provided a statement (SOF) to the FAC in relation to the appeal which was provided to the parties. The SOF provided an overview of the processing of the application and the steps and dates involved. The SOF sets out that the application was submitted on 09/07/2021, was advertised on 16/08/2021, and that referrals were made to the Local Authority, An Taisce and the NPWS. It also includes content addressing the grounds of appeal on the DAFM's behalf and confirms that the site was desk and field assessed on 20/10/2021. The SOF sets out that a number of documents (including a revised site notice, the NPWS response, a revised species map, a revised bio map and a request for information from DAFM dated 01/11/2021) were not made public when the licence was granted and that they were subsequently made public on 20/02/2023. The SOF also records that three submissions were received in relation to the application.

Considerations of the Forestry Appeals Committee

The FAC in the first instance considered the Appellant's request for an oral hearing of the appeal. 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.

The FAC considered the grounds in the appeal relating to a lack of due process arising from delay in the publication of the decision. The FAC noted that the date of the issue of the licence was the 15/07/2022 (being a Friday) and that the public was notified of the decision on 18/07/2022 (being a Monday). The FAC does not consider that there was undue delay in the publication of the decision as this occurred on what was effectively the next working day following the issue of the decision. The FAC finds that a number of documents were not made public at the time of the making of the decision including a revised site notice, the NPWS response, a revised species map, a revised bio map and a request for information from DAFM dated 01/11/2021. The FAC finds that these documents were uploaded to the FLV on 23/02/2023. The FAC concluded that this constitutes an error in the DAFM's processing of the application and considered

that the DAFM failed to meet the standards / requirements that it has set for itself in this regard in relation to the publication of application documentation. The period in which an appeal can be taken is provided for in legislation by the Minister.

The FAC considered the submission that the erection of the site notice was not compliant with the Forestry Regulations. The FAC finds that article 11(1) of the Forestry Regulations 2017 (S.I. No. 191/2017) requires that in relation to afforestation, the applicant shall, before the making of the application, erect a notice in a form determined by the Minister, at the entrance from the public road to the land to which the application relates or, where no entrance exists, at the point where it is proposed to create an entrance, so as to be easily visible and legible by persons using the public road, and shall not be obscured or concealed at any time. The FAC notes that in the SOF made to it by the DAFM it states that the application was submitted on 09/07/2021 and that the site notice date was 28/07/2021. The FAC concluded that this represents an error in the making of the application such that the application did not meet the requirements of 11(1) of the forestry regulations 2017 on the date on which it is stated to have been submitted.

The FAC considered the grounds in the appeal contending that condition No 2 as attached to the licence cannot be understood by the layperson citing inability to access documentation. The substance of this ground of appeal refers to the understanding of the contents of the documents referenced, the updating of documents, and the availability of circulars on the DAFM website and as such not all of the matters are within the remit of the FAC. In dealing with the actual wording of the condition the FAC considers that the condition, taken within the ordinary meaning of the words, can be readily understood by a layperson demonstrating average judgment. The FAC considers that requiring adherence with standards of good practice is common and accepted practice across a number of sectors including Forestry. The FAC is not satisfied that the DAFM has erred regarding this ground of appeal. The FAC noted that the Forestry Act of 2014 makes several references to the inclusion of conditions in a licence. The condition that is referred to in the grounds relates to standards of good practice that are published and available on the DAFM website. On this basis the FAC is satisfied that the conditions attaching to the licence are for the purposes of ensuring compliance on the part of an applicant or owner of lands on which the licence is granted, and that a basic understanding of forestry operations, including those relevant standards and circulars that may be in effect, can reasonably be assumed. The FAC is not satisfied that an error was made in the granting of the licence in relation to this ground of appeal.

The FAC considered the contention that licence conditions are not consistent with the reason for the condition wherein the grounds cite the condition relating to the planting of an undulating band of 5 to 8 rows of mixed native broadleaf species along a specified portion of boundary on plot 2. The FAC considered that the reason given for the inclusion of this requirement to plant a band of broadleaf at a particular section of plot boundary is relatable to the condition concerned. The FAC concluded that based on the information available to it that the DAFM has not erred in the processing of the application as it relates to this ground of appeal.

The FAC considered the submission in the grounds that no reason is given for a licence condition. The FAC finds that the requirement to consult with Leitrim County Council prior to commencement of any work forms part of condition number 5 of the licence and that reasons are given for the other requirements in this condition. The FAC notes the provisions of section 7 of the Forestry Act 2014 wherein at subsection (3) it sets out that where conditions are specified under subsection (1) that the reasons for the inclusion of conditions shall be provided. In this instance, and while it may seem an obvious response to the submission from the Local Authority, the FAC concluded that the absence of the giving of a reason for a condition of licence in this case constitutes an error in the processing of the application.

The FAC considered the contention in the grounds that access is not adequately considered citing that the whole project must be considered and that the Local Road network is not suitable for eventual timber extraction. The FAC finds that the application made to the DAFM in this case was for afforestation of land. The FAC is not aware of a binding requirement on the DAFM to consider as part of an afforestation proposal future requirements that are presently provided for separately under Forestry Licencing Legislation. It is noted that an element of the Local Authority submission relates to the approval of a forest road entrance and in that context a condition is suggested in relation to half load limits for timber and the trimming of verges to maintain sightlines. The FAC concluded that based on the information available to it that the DAFM has not erred in the processing of the application as it relates to this ground of appeal.

The FAC considered contentions in the grounds relating to application issues. In relation to the area of the project the FAC finds that following the issue of a request for information by the DAFM dated 01/11/2021 that the proposal was revised from 10.54 ha to 7.81 ha and that revised mapping and site notice were submitted. The FAC notes that the application was then assessed as a proposal for afforestation on lands comprising 7.81 ha. The FAC however notes that the documents setting out the revisions to the proposal were among those not published at the time that application was approved as alluded to earlier in this letter. The FAC concluded that this nonpublication of documents represents an error in the processing of the application. In relation to contentions in the grounds relating to ABE the FAC concluded that the appellant has not provided convincing evidence that the DAFM has erred in its processing of the application regarding this issue. In relation to Woody Weed Removal the FAC considered the grounds which submit a lack of details in the proposal and suggesting that it should be confirmed that none will be removed. The FAC notes that section 9.2 of the Forestry Standards Manual addresses this matter indicating that every effort should be taken to minimise the need for removal for biodiversity purposes but also sets operational requirements in relation to avoiding damage to soils and the use of herbicides where it is required to be removed. The FAC considers that Woody Weed Removal is a standard operation in forestry management. Based on the information available to it the FAC is not satisfied that the DAFM has erred in the processing of this application in so far as this ground of appeal is concerned.

The FAC considered the grounds in the appeal in relation to EIA screening and related matters and in this context noted the submission by the DAFM in the SOF relating to EIA assessment. This ground of appeal submits a lack of reasoning for EIA screening determination, that the DAFM assessment for cumulative impact is flawed, that the DAFM assessment of the project does not show the lands to be other than High Nature Value Farmlands, that there is inadequate hedgerow setback, references matters relating to Article

12 of Habitats Directive (Annex IV Species), submits an inadequate protection of protected species (Hen Harrier), queries how the DAFM has determined the landscape impact of the project, in relation to water quality submits lack of evidence for guidelines and AA mitigation, in relation to planting of peat soils submits lack of emissions data, in relation to safety the grounds highlights the Co. Council's safety concerns in an engineering report (which refers to the construction of forest road entrance) and raises matters relating to Recreation, Social and Cultural factors.

The FAC noted that the DAFM carried out an Assessment to Determine EIA Requirement that bears the certification date 13/07/2022 being in advance of making the decision to grant the licence subject of this appeal. In this assessment the Inspector recorded a consideration of the application across a range of criteria relevant to the proposed afforestation, including water, soil, terrain, slope, designated areas, landscape and cumulative effects, and determined that the project was not required to undergo EIA. The FAC noted that the procedure as recorded provides for further commentary to be recorded and that same shows the following *'Forest area and design changes requested and completed in light of local submissions'*. The grounds of appeal question the DAFM assessment for cumulative impact. The FAC noted that the DAFM in their considerations on the "Cumulative effect and extent of project" recorded answers to questions in the Assessment to Determine EIA Requirement relating to, existing afforestation of 3 years or less and any proposed afforestation within a 500m radius exceeding 50 Ha., the approximate % forest cover in the underlying waterbody (or waterbodies) and within 5km, both currently and five years previous. The DAFM concluded that based on the extent of the forest cover that the cumulative effect of this proposal was not likely to have a significant impact.

The FAC however noted that while the Minister recorded a separate characterisation of plans and projects in the area in the In-Combination Reports carried out as part of the AA process, that this is not explicitly cross-referenced in the EIA Determination. The EIA Determination itself only refers to forestry projects and references a *'Last Spatial Run Date'* of 13/07/2022. While the FAC would consider it reasonable that the record as a whole should be considered and that the reasons for considering that the proposal is not likely to have a significant effect on the environment might be found in separate documents, based on the foregoing it is not apparent that adequate consideration was given to cumulative effects (including non-forestry projects) when making the determination for EIA requirement. The FAC considers this to be an error in the processing of the application. The FAC considered the submission in the grounds relating to Recreation, Social and Cultural Factors wherein it references the N/A answer to the question in the Assessment to Determine EIA Requirement regarding the impact of the proposed area on an area commonly used by the general public for recreation. The FAC also finds that in the SOF to it the DAFM acknowledges that this N/A answer is an error.

The FAC considered the grounds in the appeal regarding AA and related matters. In that context the FAC finds on file an AASR which shows a date of 15/07/2022 and a *'Date Inspection Certified'* as 13/07/2022. This AASR examines and screens out seven European sites as detailed earlier in this letter. It concludes that there is no likelihood of a significant effect on any European site, and that Appropriate Assessment not required. The FAC also finds an AASD on file dated 25/04/2022 as completed by a Consultant Ecologist. This report includes an expert review of the DI's AASR and agrees to screen out 6 sites of the seven sites

examined in the DI's AASR and screens in Lough Gill SAC due to "direct downstream hydrological connection via source-pathway receptor Killanummery_010 to Killanummery_020 5.2km downstream". The AASD includes two additional sites for screening that were not examined in the DI's AASR, these two (Cummeen Strand, Drumcliff Bay (Sligo Bay) SAC & Cummeen Strand SPA), are outside a 15km radius of the project area but are hydrologically connected and are screened in due to "potential impact to aquatic estuarine habitat and species". The FAC finds that the project proceeded to Appropriate Assessment stage 2 for the three screened in sites (Lough Gill SAC 001976, Cummeen Strand, Drumcliff Bay (Sligo Bay) SAC 000627 and Cummeen Strand SPA 004035).

The FAC finds an AAR as completed by a Consultant Ecologist and dated 25/04/2022 is to be found on file. It considers the Qualifying Interests of the three screened-in sites, their Conservation Objectives, the potential for adverse impact, and prescribes mitigation measures where required. In Section 4 it lists the mitigation measures considered necessary for this project. The Mitigation listed is stated to reflect the "(i) the slope leading to the aquatic zone; (ii) the peat soils; and (iii) the direct hydrological connection to a high-status waterbody (Killanummery_020) and the current poor status of the Killanummery_010, the required width of the water setback to be applied at afforestation as specified in the Environmental Requirements for Afforestation (DAFM, 2016), (see Tables 5 & 6 therein, primarily is 20 metres). It states that Plot 2 (GPC3) will have 20m setbacks with 10 rows of pit planted broadleaves due to peat soils and slight flood risk. In Section 6 in relation to In-Combination Effects it concludes that as there will be no individual effect on screened-in European sites, there is no potential to contribute to an In-Combination effect. This wording is also broadly reflective of the wording in a subsequent and separate In-Combination report and statement dated 13/07/2022 which is to be found on file wherein it states,

'It is concluded that there is no likelihood of the proposed afforestation project CN89234 itself, i.e. individually, having a significant effect on certain European Site(s) and associated Qualifying Interests / Special Conservation Interests and Conservation Objectives, as listed in the main body of this report. In light of that conclusion, there is no potential for the proposed project to contribute to any significant effect on those same European Site(s), when considered in-combination with other plans and project.

Furthermore, it is considered that the regulatory systems in place for the approval, operation (including any permitted emissions) and monitoring of the effects of these other plans and projects are such that they will ensure that they too do not give rise to any significant effects on these European Sites.

Therefore, it is deemed that this project, when considered in combination with other plans and projects, will not give rise to any significant effect on the above European Site(s)'

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. 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 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. The FAC considered this to be a serious error in the processing of the application. The FAC finds that the AAR at section 6 dealing with In-Combination, quotes a licence number other than the one the AAR relates to and that this occurs at paragraph 1 and paragraph 2 (i.e. the In-Combination statement).

The FAC considered the grounds of appeal relating to Water Quality which made submissions contending that as the water quality in the main River Sub-Basin in which this project lies is deemed to be At Risk with Forestry identified as a significant pressure then the 'Yes' answer to the question 'Will adherence to water quality guidelines, harvesting guidelines and any condition to be attached to approval, be sufficient to prevent any potential significant impact to aquatic zones and water quality arising from the project' needs to be supported with evidence. The FAC finds that the DAFM in its AAR at section 3 records that KILLANUMMERY_010 is of poor status. This status is repeated in a number of other references in the file including in submissions made by consultation bodies. In this context the FAC notes that the status of the waterbody concerned (as referenced in the grounds) is recorded by the DAFM and that this is the context against which the application is assessed. It is further noted that the considerations made by DAFM in its assessment to determine EIA requirement were clearly articulated in the screening form and were based on a spatial run that postdated the completion of the AAR.

The FAC finds that having consulted the Catchments.ie website on the day of the hearing of this appeal that the status of the KILLANUMMERY_010 waterbody is recorded as Good, and that the status is based on monitoring. The FAC also finds that the Catchments.ie website on the same day recorded that the said waterbody is not at risk for the 2016 – 2021 cycle. The FAC notes that the licence as issued contained a number of conditions (as set out in the AAD) relating to water setbacks, silt and nutrient controls, the preparation, storage and use of potentially hazardous material and that no fertilizer is to be used. The proposal is for the afforestation of 7.81 ha of land. Based on the information available to it and having regard to the 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. While acknowledging that the DAFM had recorded a status and risk that is different to that displayed on the Catchments.ie website at the date of hearing, the FAC considered that it is likely that the status and risk as recorded represented that which was known at the time. Having regard to all the circumstances in this case, including the nature and scale of the project, the FAC considered that the 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 and as referenced in the grounds of appeal.

The grounds submit that there are chronological errors in the AA process while referencing an AA Screening Report and Determination which bears a date of 13/07/2022 and that this postdates the AAR and AAD. The FAC would understand that this refers to the screening report as carried out by the DI. While the FAC cannot be definitive in this matter it would seem that the date on the document (13/07/2022) is an error as the same report is referenced in the AASD dated 25/04/2022 where it states in section 4 that '*The AA Screening Report completed by the District Inspector is included on file.....*' The FAC finds that the

DI's AASR screens out all seven sites examined quoting the reason as '*Other factors, As per AAD*'. The FAC finds that these screening conclusions are inconsistent with the screening conclusions recorded in the AASD of 25/04/2022 and that this represents an error in the processing of the application in so far as AA is concerned. The grounds also reference a second In-Combination Assessment report dated 13/07/2022 which postdates the AAD of 28/06/2022. The FAC noted the submission in the SOF to it in this connection wherein it states that the (second) In-Combination report was compiled because it would have been requested as the time was almost elapsed. The FAC considered that where a stage 2 Appropriate Assessment is required for a project then all AA processes / considerations relating to that project should be available at the time the AAD is determined.

The FAC considered the grounds of appeal submitting that there is no evidence that the An Taisce submission / response was adequately considered. The FAC finds that the submission made by An Taisce in relation to this application has been referenced in the DAFM Appropriate Assessment documentation including in the AASD and the AAR of 25/04/2022 and the AAD of 28/06/2022. Based on the information available to it the FAC is not satisfied that the DAFM has erred in the processing of this application in so far as this ground of appeal is concerned.

The FAC considered the ground of appeal which contends that there has been inadequate assessment of the impact of the proposal on species in Annex IV of the Habitats Directive. The FAC noted that the site was inspected and that the appellant has adduced no evidence as to the presence of annex IV species in the area of the proposed afforestation. The lands in this case are agricultural in nature and the existing hedgerows are required to be retained. The FAC further noted that the Environmental Requirements for Afforestation 2016 require an ecological report for Annex IV species where they are known to be present or have been observed. The FAC considered the submission in this connection made to it by the DAFM in the SOF wherein it sets out a detailed response to the ecology related grounds in the appeal including in relation to Hen Harrier. The FAC considers that the granting of the licence does not remove or supersede any other legal obligations on the Applicant or their agents. The FAC is not satisfied that the DAFM has erred regarding this ground of appeal.

The FAC considered the grounds in the appeal regarding operability of Archaeological conditions. In this context the FAC noted the response on file from the DAFM archaeologist dated 19/08/2022. While noting that the original Archaeology Report on file predated the revisions to the application the FAC concluded that the appellant has not provided convincing evidence to demonstrate that the DAFM has erred in the processing of the application as it relates to these grounds in the appeal.

In relation to the grounds in the appeal regarding '*Right Tree in the Right Place for the Right Reasons*' it is contended that the existing biotic community has not been considered adequately and that planting of exotic conifers does not accord with the existing biotic community. The FAC noted the documentation on file, the details of the proposal, the conditions under which the proposal would occur, including the retention of all existing trees. The FAC further considered the nature of the proposal and the lands on which it would occur and that the site was field inspected. The FAC considers that due regard has been

had to the protection of the existing biotic community. The FAC is not satisfied that the DAFM has erred regarding this ground of appeal.

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal, submissions made, and the statement of fact submitted by the DAFM. The FAC is satisfied that a series of significant or serious errors was made in the making of the decision CN89234 and that this included a serious error in the application that was submitted. The FAC is thus, allowing the appeal and setting aside the decision of the Minister regarding licence CN89234 in accordance with Section 14B of the Agriculture Appeals Act 2001, as amended.

Yours sincerely,



Seamus Neely, On Behalf of the Forestry Appeals Committee