



19th July 2023

Subject: Appeals: FAC105/2022, FAC106/2022, FAC107/2022, FAC108/2022, FAC109/2022, FAC111/2022, FAC112/2022, 113/2022, FAC 114/2022 relating to Licence CN83176

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. The FAC, established in accordance with Section 14A(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.

DECISION.

Having regard to the evidence before it, including the Department of Agriculture, Food, and the Marine (DAFM) record of the decision, the Statements of Fact (SoF) provided by the DAFM, all materials on file, the notice and grounds of the appeals (as supplemented) and submissions at the oral hearing and in particular the following considerations, the FAC has decided to set aside and remit the decision of the Minister regarding licence CN83176.

THE LICENCE.

Licence CN83176 is for 26.7Ha of afforestation the townland of Crovraghan, Co. Clare.

The application for the licence was submitted to the DAFM on the 24th of January 2019. A decision approving the licence was issued on the 8th of August 2022 with conditions including compliance with DAFM Technical Standards, retention of all trees/hedgerows on site, adherence to the Forestry & Archaeology Guidelines, adherence to the mitigation measures in the Appropriate Assessment Determination (AAD), the use of inverted mounding, and compliance with conditions in the archaeology report on the licence application.

FORESTRY APPEALS COMMITTEE.

An oral hearing was held remotely at a sitting of the FAC on the 18th of April 2023 which considered appeals FAC105-109/2022 (inclusive), FAC111/2022-FAC114 (inclusive) and the processing of the licence as it relates to the decision to issue the licence on the 8th of August 2022.

The FAC members present were: Mr. Donal Maguire (Chairperson), Mr. Luke Sweetman and Mr. Iain Douglas.

Secretary to the FAC: Mr. Michael Ryan. Observers from the FAC: Ms. Vanessa Healy & Ms. Roisin Moore.

DAFM was represented by: Ms. Mary Coogan, Mr. Kevin Keary, Ms. Tanya Sweeney, Mr. Barry Fitzgibbon, and Mr Brian J Kelly (part time)

The appellants present were:

BACKGROUND.

The proposal consists of the planting of 26.7Ha of GPC 3,4,6,8, and GPC 9 – Native Woodland Establishment in 12 plots. Plot 1 is 21.41Ha Sitka spruce with ADB. Plot 5 is 1.38Ha of Douglas fir. Plots 2, 3, 4, 8, 9 & 11 are Bio plots totalling 2.49Ha, and Plots 6, 7 & 10 are broadleaf species across 1.42Ha. (Plot 12 is an additional Bio plot as a result of revisions)

The site is located approximately 1.6km north-west of the village of Killadysart. The site is accessed via local roads off the R473 coast road. The afforestation site is located approximately 140m north-west of the boundary of the Lower River Shannon SAC and the River Shannon and River Fergus Estuaries SPA. The land use in the area is agriculture and there are a number of residences in the area most more than circa 350m from the proposed planting.

This licence was the subject of a previous oral hearing held on the 8th of March 2021 for appeals FAC240/2019, FAC256/2019, FAC257/2019, FAC258/2019, FAC259/2019, FAC264/2019, FAC265/2019, FAC266/2019, FAC267/2019, FAC268/2019, FAC269/2019, FAC270/2019, FAC271/2019, FAC272/2019, FAC273/2019, FAC274/2019, & FAC276/2019. The licence was set aside and remitted to the Minister to undertake a new assessment to determine whether an EIA is required and to undertake a new Appropriate Assessment screening of the proposal itself and in combination with other plans or projects under Article 6 of the EU Habitats Directive.

In the interest of clarity and for the avoidance of doubt the sitting of the FAC on the 18th of April 2023 considered appeals FAC105-109/2022 (inclusive), FAC111/2022-FAC114 (inclusive) only, and took no account of the previous appeals.

The application documents before the FAC included a Bio Diversity/Operational Map (as revised), a species map (as revised), a location map, photographs of the site notices in-situ, a fencing map, and a Natura Impact Statement (NIS) dated 13th of March 2020 submitted by the applicant. (The NIS was advertised for public consultation on the 30th of May 2022) and a Landscape & Visual Impact Assessment (LVIA) dated August 2021 and uploaded to the Forestry Licence Viewer (FLV) on the 8th of September 2021.

The DAFM referred the licence to the following consultation bodies (i) An Taisce on 23rd of July 2019 which replied on the 8th of August 2019 indicating that Appropriate Assessment was required for the Lower River Shannon SAC and the River Shannon and River Fergus Estuaries SPA and that there was insufficient ABE as required by the Environmental Requirements for Afforestation (ERA), (ii) Clare County Council on the 20th of February 2019 which did not reply and (ii) the National Parks & Wildlife Service (NPWS) on the 21st of May 2021 which replied on the 4th of July 2021 noting that the site was proximate to the two Natura 2000 sites mentioned above, that some drains and streams not mapped on the biodiversity map, that it must be ensured that the proposal will not impact on water quality in the European sites, that all wetlands should be retained unplanted, that that all Ash trees are retained and that all hedgerows with Ash should have a larger setback to allow the Ash to continue to grow throughout the lifetime of the forestry and that it must be ensured that all environmental guidance and standards are complied with.

On the DAFM file there is an Inspector's Certification Report dated the 21st of July 2022; an Inspector's Appropriate Assessment Screening Report (AASR) dated the 21st of July 2022; an Inspector's Assessment to Determine Environmental Impact Assessment (EIA) Requirement dated the 21st of July 2022; an Appropriate Assessment Screening Form dated the 13th of August 2019, a DAFM ecologist's Appropriate Assessment Determination (AAD) dated the 4th of July 2022, an In-combination Statement dated the 21st of July 2022 and an archaeology report dated 17th of May 2021.

The Inspector's Certification Report recommends that the licence be approved subject to four conditions; 1. the carrying out and completion of the afforestation in accordance with the measures set out in the ERA and the Forestry Standards Manual (FSM), 2. retention of all existing trees and hedgerows within the site, 3. compliance with the mitigation measures in the AAD and 4. the use of inverted mounds rather than mound drains over the majority of the site.

The Inspector's Assessment to Determine EIA Requirement concludes that the proposed afforestation is not required to undergo EIA.

The licence was subject of both a Desk and Field Inspection. The Field Inspection took place on the 11th of June 2019.

There were twenty-four third-party submissions on the licence.

THE APPEALS.

There are eight third-party appeals against the decision to approve this licence application.

The grounds of the appeals are summarised as follows:

- Procedural & Administration.
 - Unfair procedures & the limited 14-day appeal period.
 - Absence of documentation.
 - Lack of communication about documents being available on -line.
 - Non-compliance with the Forestry Regulations 2017.
 - Ownership of part of the lands.
- Environmental Impact Assessment (EIA).
 - Lack of EIA.
 - Issues/disagreement with the findings of the (LVIA).
 - Soil type & depth liable to excessive run-off and flooding
 - Adverse impact on cultural heritage and tourism of the area.
- Appropriate Assessment (AA).
 - AA incomplete & deficient – lacunae in AA.
 - No hydrogeological assessment.
 - AAD mitigations not site-specific.
 - Groundwater pathway not considered.
 - Impact of climate change not considered.

- Residential Amenity.
 - Impact on visual amenity from dwellings.
- Access.
 - Access inadequate
 - Impact on walking route

Additional Submissions were received from a number of appellants, FAC105/2022, FAC106/2022, FAC107/2022, FAC108/2022, FAC109/2022, FAC112/2022 in response to the DAFM Statements of Fact (SoFs), and are summarised as requesting an oral hearing, procedural matters, AA and matters not addressed in the SoFs.

DAFM STATEMENT OF FACT.

The SoF provided by the DAFM for the appeal, dated the 12th of December 2022 confirms the administrative details of the licence application, and indicates that the licence application was desk assessed and that a field assessed was carried out on the 11th of June 2019. The SoF states that the DAFM was satisfied that all criteria in its standards and procedures were adhered to in making the decision on this licence application. The SoF includes information on the administration of this particular licence application in response to issues raised in the appeals.

There is also a statement dated the 21st of September 2022 from the District Forestry Inspector (DI) confirming that the AA process was carried out using the procedures of November 2019, that the standard operating procedures were applied, and contains a recommendation that,

“Following a review of the submissions on this file. I deem that the application should be remitted to the Forest Service to change the design on the proposed development so that it may accord with the afforestation scheme’s rules as they apply to the provision of dwelling setbacks. Also due to the Heritage Landscape Designation of the proposed development, I think it reasonable that the quantity of broadleaves be increased by way of the inclusion of additional broadleaved plots in what is currently numbered plot number 1 along its northern and western boundaries.”

CONSIDERATION BY THE FAC.

The FAC, at the sitting of the FAC on the 18th of April 2023, had before it the full DAFM record of the decision, the notice, and grounds of appeal (and supplementary submissions) and submissions at the oral hearing, the SoFs provided by the DAFM and all materials on file.

GROUND OF APPEAL

Procedural & Administration.

Notification and 14-day period.

The grounds of appeal submit that there is a lack of due process arising from the date the decision was made and the date the decision was published as the timing does not comply with the Aarhus Convention. The FAC noted that the date of the decision to grant the licence was issued on Monday the 8th of August 2022 and that the public was notified of the decision on the DAFM website the following day Tuesday the 9th of August 2022. The FAC does not consider that there was undue delay and noted that the appellants were not prejudiced in submitting appeals for consideration by the FAC on the current licence application by the date of publication.

The FAC is aware that the 14-day period allowed for making an appeal to the FAC is a statutory requirement, pursuant to Regulation 5(1) of the Forestry Appeals Committee Regulations 2020 (as amended) and that the appeals were received within that period.

Absence of documentation & Lack of communication about documents being available on-line.

The grounds of appeal submit that the AAD was not included in the letter of the 8th of August 2022 issued to appellants, that the submission of the NIS was not notified to the appellants and that there was a lack of communication about documents being on-line in the Forest Licence Viewer.

The FAC noted the DAFM SoF regarding the administrative details of the licence application and that the letter of the 8th of August 2022 sent to those who made submissions on the application was a notification of a decision having been made and not the decision itself and that all documents were available on-line the same day.

With regard to the submission that the NIS was not notified to the appellants, the FAC considered the provisions of Regulation 10(1) of the Forestry Regulations 2017 which states:

10. (1) Where the Minister receives an application under Regulations 3, 5, 6 or 7, he or she shall, before making a decision on the matter, publish a notice of the application in a manner determined by the Minister.

The FAC noted the DAFM SoF confirmed that the requisite notice was published and that due to the number of applications being advertised for 2nd public consultation the DAFM is not in a position to inform each and every person who made a submission when a file is advertised for the second time and that the Department's chosen method of publication of such notices is the DAFM website and the onus is on interested parties to monitor the website.

The FAC is satisfied that the DAFM has complied with the Forestry Act and Regulations with respect to notification of the public of its decision and that it has followed its standard procedures with regard to how it communicates with appellants and no error has occurred in this regard.

With regard to the submission that there was a lack of communication about documents being on-line in the FLV Referring to the fact that the DAFM website is the preferred method of notification to the public and that DAFM is of the view that there is an onus on interested parties monitor the website, the FAC noted that on the DAFM website at <https://www.gov.ie/en/publication/public-consultation-on-forestry/> the public consultation process is outlined and the FLV explained, and a link is provided to the FLV.

Non-compliance with the Forestry Regulations 2017.

This ground of appeal refers to Regulation 13 of the Forestry Regulations 2017 dealing with EIA and is addressed in detail below.

Ownership of part of the lands.

The grounds of appeal submit that there has been a change ownership of one of the Land Registry folios for the lands. The FAC noted that in the DAFM SoF it is stated that there are letters of permission from the landowners sufficient to make the licence application and that ownership is confirmed at "Form Stage 2". The FAC is not in a position to adjudicate on legal entitlements on ownership of the land but notes that the granting of a licence does not confer any legal entitlement to carry out the proposed afforestation without the owner's permission.

Revised Species Map and Biomap.

The FAC noted that the applicant submitted a revised Species Map and Biomap dated the 7th of September 2022 showing dwelling setbacks which were not shown on the original Biomap as required by the ERA. The record shows that the revised maps were submitted after the decision issued and after appeals had been lodged and were not made public on the FLV and were therefore not available to the appellants for their further submissions. The FAC further noted that part of the recommendation of the DI in his statement dated the 21st of September 2022 that *"the application should be remitted to the Forest Service to change the design on the proposed development so that it may accord with the afforestation scheme's rules as they apply to the provision of dwelling setbacks."*

The FAC considers that the non-availability of the revised biomap and species map to the FAC during the appeal process has denied the appellants the opportunity to make submissions on significant information not previously in the public domain does not accord with fair procedures.

Environmental Impact Assessment.

The grounds of appeal quote Regulation 13 of the Forestry Regulation 2017 (as amended) dealing with EIA without making a specific point. The FAC noted 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 decision under appeal relates to a licence for afforestation of 26.7 Ha. which is sub-threshold for mandatory EIA as set out in Irish Regulations.

The FAC noted that the DAFM carried out an Assessment to Determine EIA Requirement dated the 21st of July 2022 in advance of making the decision to grant the licence subject of this appeal. 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 is satisfied that the DAFM had adequate information on file to reach a decision on whether or not the project should undergo EIA and that the DAFM did not err in this aspect of processing the licence application.

Issues/disagreement with the findings of the Landscape & Visual Impact Assessment (LVIA).

The grounds of appeal and submissions at the oral hearing disagreed with the LVIA submitted by the applicant. The LVIA consists of a report, a series of photomontages taken from different viewpoints showing the proposed afforestation at various stages of growth and the author's curriculum vitae.

The submission at the oral hearing from the expert witness on landscape architecture on behalf of FAC 108/2022 was that (i) the LVIA did not use the industry best standards as set out by the Landscape Institute, (ii) there is no evidence that local consultation had been taken into account, (iii) that the Landscape Character Assessment in Clare County Development Plan highlights the importance of stone walls in the landscape and that forestry is a threat to the landscape and does not appear to have been considered in the LVIA, (iv) there is no Zone of Visual Influence map (ZVI),

(v) in the photomontages tree heights at residential properties should be taken at ground level as a true reflection of the height of the trees (vi) the locations of the viewpoints need to be verified, (vii) the report is based on photomontages taken at road level, not from “receptors” ie. residences, as trees will have more impact from dwellings than from cars, (viii) the visual impact from dwellings has been grouped with lower impact receptors and therefore has reduced degree of visual impact from the dwellings. In follow-up statements the expert witness restated his opinion that the location of the receptor is what is relevant, and that broadleaved planting won’t make a difference from Viewpoint 3.

The FAC noted from publicly available sources that the majority of dwellings (taken to be the “receptors”) located along the northern side of the R473 are between 350m and 600m. distant for the proposed planting and those on the southern side of the R437 are circa 265m. Those dwellings on the northern side of the R473 are well above road level of the R437, those on the southern side while above road level are less so. The FAC accepts the view from those “receptors will be different from the view at road level.

It is stated in the LVIA that the methodology for preparation of the LVIA is that prescribed in the guidance document “Guidelines for Landscape and Visual Impact Assessment” (2013) published by the Landscape Institute and the Institute of Environmental Management and Assessment.

While the FAC is not in a position to arbitrate between two expert opinions in the case of the detailed analysis of the LVIA, it did consider that the photomontages contained in the LVIA were sufficient to give a general impression of the impact of the afforestation in the landscape. Taken together with the acknowledgement that the proposed afforestation adjoins but was not within “Heritage Landscape 3: The Fergus/ Shannon Estuary” identified in the Clare County Development Plan of 2017-2023 (the plan in force at the time of the decision), that the development plan states in Section 13.3.2.3 Heritage Landscapes forestry is a use that is “expected” in Heritage Areas subject to scenic, ecological and historical considerations and the fact that the Clare County Council did not submit any observations on the licence application, the FAC does not consider that DAFM has erred in its processing of the application as it relates to this ground of appeal.

Concerns that the soil type & depth will lead to excessive run-off and flooding of lands.

The grounds of appeal and submissions at the oral hearing contend that the soil type and depth of soil will lead to excessive run-off from the site so as to cause flooding of adjoining lands and impact on water quality. The FAC noted that the soils on the site are stated to be predominantly brown earths in nature. The slope is predominantly flat to moderate and is crossed by/adjoins an aquatic zone. The expert witness for appeal reference FAC 108/2022 who spoke on hydrology referred to the soils on the site as being lithosols & regosols which he considered were shallow soils and unsuitable for the planting of Sitka spruce. The FAC noted that Soil Survey Bulletin No. 23 Soils of County Clare published on the publicly available Teagasc website indicates that both the soil types on this site, the Kilfergus Soil Series of Brown Earths and the Kilrush Soil Series of Gleys are both suitable for forestry.

The expert witness also contended that the mitigation measures to protect water quality were generic and not site specific.

The expert witness for the applicant contended that the mitigation measures in the AAD, which include no cleaning of drains within 50m of the aquatic zone, invert mounding in the majority of the site, no disturbance of wet woodland, carr and thick scrub or woods within 50 m of an aquatic zone or within 20 m of a relevant watercourse on the site, the planting of broadleaved species alongside setbacks, and the dry nature of most of the site will all act to negate siltation leaving the site. The

expert witness for the applicant also stated that pesticides are not used on initial afforestation and that herbicide is applied manually.

The FAC noted that the AAD mitigation measures to protect water quality in the AAD require measures additional to those set out in the ERA 2016 and were informed by a field visit conducted by a DAFM Ecologist on the 7th April 2022, and can therefore be said to be site specific, furthermore mitigation measures are augmented by the condition in the licence that is no need to install mound drains for the vast majority of the approved area and that inverted mounds are to be used instead. Taken together the mitigation measures to protect water quality in the AAD, the additional conditions in the licence and compliance with the ERA will reduce the risk of excess surface water runoff and flooding of the road and adjoining lands. The FAC further noted that the DI has certified that the site and species proposed are silviculturally and environmentally suitable for this site. The FAC does not consider that DAFM has erred in its processing of the application as it relates to this ground of appeal.

The FAC noted the licence condition requiring the majority of the site to be invert mounded and is of the view that, in the interest of clarity a cultivation map should be submitted that accurately identifies the area for invert mounding and the remaining area for drainage.

Adverse impact on cultural heritage and tourism of the area.

This ground of appeal contends that the proposed afforestation will have an adverse impact on the cultural heritage and tourism of the area, with particular reference to the archaeology on the site and the fact that Crovraghan Pier, on the Shannon Estuary Way is considered a Tourism Heritage Asset in Killadysert. The FAC noted that the conditions to protect the archaeology of the area set out in the DAFM archaeology report were incorporated into the licence and as such are binding on the applicant. The FAC noted that the photomontage from Crovraghan Pier Viewpoint 2 indicates that the proposed afforestation is screened by the landform. Appellant 106/2022 indicates that the first clear view of the Shannon from the road to Crovraghan Pier is at the Crovraghan Stream. The FAC noted that particular view is enclosed planting on both side of the road for approximately 177m before opening out again with views to the Shannon. The FAC noted that while the DI has certified in the EIA Screening that the area is a High Amenity Landscape and is listed in the Clare County Development Plan 2017-2023, he also considers that the forest design submitted (and additional design improvements) is sufficient to prevent any significant impact on the landscape and that the design does comply with the Forestry and the Landscape Guidelines. The FAC is satisfied that the DAFM had adequate information on file to reach a decision on whether or not the project would have an adverse impact on cultural heritage and tourism of the area and that the DAFM did not err in this aspect of processing the licence application.

The FAC noted that the *Assessment to Determine EIA Requirement* refers to and relies on Guidelines in relation to Water Quality, Archaeology and Landscape however these Guidelines have not been attached as a condition of the licence. Furthermore, the Environmental Requirements for Afforestation, adherence with which is a condition, states that it replaces the existing Guidelines. The FAC considers that this creates unnecessary confusion and a lack of clarity in the processing of the decision.

Inconsistency in the figures of the % of forest cover in the area.

The FAC noted that the figures given to the questions in the Assessment to Determine Environmental Impact Assessment (EIA) Requirement “*What is the approximate % of forest cover at present within 5 km?*” is 6.72% and “*What is the approximate % of forest cover currently in the underlining waterbody (or waterbodies)?*” is 3.52%. The FAC noted that these figures are inconsistent with the figure given in the In-combination Statement of approximately 13% for the

percentage given for the forest cover in the River Sub-Basin Killadysert Stream_010. The FAC concluded that, in the absence of a documented reconciliation of the apparent differences in the forest cover percentages as recorded in the Assessment to Determine EIA Requirement and that recorded in the In-Combination report, the DAFM made a serious error in the processing of the application in this case as it related to the EIA Directive.

Cumulative Effect

In reviewing the Assessment to Determine EIA Requirement the FAC noted that questions that relate to cumulative effect only refer to forestry projects and do not consider other types of projects. The FAC also noted that a separate process was carried out for AA which includes an in-combination assessment of other plans and projects which includes a range of other plans and projects in addition to forestry projects. This in-combination assessment was carried out on the 21st of July 2022 and the DI indicated during the oral hearing that he would have considered this document, including the types of developments contained therein, prior to certifying the file. The FAC consider that while the DAFM are entitled to rely on a reading of the entire file, it would be clearer if it was made explicit that the Assessment to Determine EIA requirement included consideration of the AA In-combination report.

The Natura Impact Statement & Appropriate Assessment Determination.

The applicant submitted a NIS dated the 13th of March 2022 which included an AA Screening Report (AASR) which examined the following Natura 2000 sites within 15km of the site; Askeaton Fen Complex SAC (Site Code 002279), Barrigone SAC (Site Code 000432), Knockanira House SAC (Site Code 002318), Lough Gash Turlough SAC (Site Code 000051), Lower River Shannon SAC (Site Code 002165), Newhall and Edenvale Complex SAC (Site Code 002091), River Shannon and River Fergus Estuaries SPA (Site Code 004077) and Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (Site Code 004161)

The NIS AASR determined that the Lower River Shannon SAC and the River Shannon and River Fergus Estuaries SPA should proceed to AA Stage 2. An AA Stage 2 (NIS) was carried on those two Natura Sites which concluded:

“This NIS has provided an assessment of all potential direct or indirect adverse effects on European Sites.

Where the potential for any adverse effect on any European Site has been identified, the pathway by which any such effect may occur has been robustly blocked through the use of avoidance, appropriate design and mitigation measures as set out within this report and its appendices. The measures ensure that the afforestation project does not adversely affect the integrity of European sites.

Therefore, it can be objectively concluded that the proposed afforestation project, individually or in combination with other plans or projects, will not adversely affect the integrity of any European Site.”

The DAFM carried out an AAD dated the 4th of July 2022 that determined:

“The Minister has carried out the Appropriate Assessment of potential impacts on the likely significant effects of the activity / project on those European sites ‘screened in’ (as listed above) and has made certain, based on best scientific knowledge in the field and the European Communities (Birds & Natural Habitats) Regulations 2011 (as amended) and the Forestry Regulations 2017, as amended, and Article 6(3) of the Habitats

Directive, that the project proposed under CN83176, individually or in combination with other plans or projects, will not adversely affect the integrity of any of the aforementioned European Sites, having regard to their conservation objectives, provided the following mitigation is implemented: Adhere to the works as proposed in the application details and NIS dated 13/03/2020 for CN83176 summarised as follows with amendments as necessary as described in Section 3, pt. 4:"

The grounds of appeal and submissions at the oral hearing contend that both the NIS and the DAFM AAD were deficient because; (i) there was no input from an expert hydrogeologist to examine potential pathways from the site to the Lower River Shannon SAC and the River Shannon and River Fergus Estuaries SPA, (ii) the surface water pathway mitigation measures were not site-specific, (see above), (iii) the groundwater vulnerability throughout the site is categorised as either "Rock at or near surface or Extreme" and that groundwater pathways have not been considered, (iv) changes in precipitation due to climate change have not been considered, (v) the bird surveys carried out for Qualifying Interests (QIs) of the SPA were carried out at the wrong time of year.

The FAC noted that the National Soils Hydrology Map publicly available on the EPA website show that the predominant type on the site is AminSW a shallow well drained mineral soil derived from mainly acidic parent materials and that a smaller area in the north of the site is described in that mapping as AminPD a poorly drained mineral soil derived from mainly acidic parent materials. The same website indicates that the site is underlain by a Locally Important Bedrock Aquifer which is Moderately Productive only in Local Zones and that the groundwater vulnerability is for the greater part of the site X - Rock at or Near Surface and a smaller, more limited area is described as Extremely Vulnerable.

At the oral hearing DAFM indicated that there was adequate depth of soil and that trial holes had been excavated on Plots 5 & 6 and were found to be satisfactory and the FAC noted that the site had been field inspected and certified as suitable for planting.

The FAC noted that neither the NIS nor the AAD addressed the hydrogeology of the site in relation to the two Natura 2000 sites subject of the NIS. While evidence was given that pesticides are not used in new afforestation, the Operational Proposal Details of the licence refer to the application of 250 Kg Granulated Rock Phosphate and the application of herbicide. Given the presence of a Locally Important Bedrock Aquifer, the fact that the groundwater is vulnerable or extremely vulnerable and notwithstanding the excavation of the trial holes, the FAC considers that the NIS and AAD should have assessed the hydrogeology of the site and that therefore a serious error has been made in the processing of the licence application.

The FAC noted that the DAFM ecologist confirmed at the oral hearing that the DAFM use Source/Pathway/Receptor model for AA and that the bird surveys were carried out in accordance with the DAFM policies and procedures. The FAC considers that the DAFM did not err in this aspect of processing the licence application.

The In-Combination Assessment.

The FAC noted that the conclusion of the In-combination Statement in the AAD states.

"It is concluded that there is no likelihood of the proposed Afforestation project CN83176 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.”

The FAC understands that the consideration of other plans and projects should take place as part of the process to ascertain whether there are likely significant effects arising from the project itself and in-combination with other plans and projects, having regard to the conservation objectives of the European site concerned, and in the assessment of the impact of such effects of the project itself and in-combination with other plans and projects on the integrity of the European site. As stated on the record it appears to the FAC that other plans and projects were only considered after the assessment on the integrity of the project was completed, which would appear to the FAC not to be in keeping with the requirements of Article 6(3) and the Forestry Regulations 2017. The FAC considers this to be a serious error as it suggests that the determination undertaken did not consider effects of the proposal which might not be significant in themselves but could in-combination with other plans and projects result in a significant effect on a European site. The FAC therefore considers that the is determination should be undertaken again to consider whether the project in-combination with other plans and projects has the potential to result in a significant effect on a European site.

Water Framework Directive.

The FAC noted that, on the publicly available EPA website the site is in the Killadysert Stream_SC_010 Sub-Catchment, the Killadysert Stream_010 River Sub-Basin. The Killadysert Stream_10 River Waterbody had an Unassigned status in the 3rd Cycle Catchment report but currently has a Good Status (based on modelling) and its risk status is under review, as per [Catchments.ie](#). The proposal is underlain by the Lissycasey Ground Waterbody which also has Good Status with its risk status under review.

There are no EPA-mapped watercourses within or adjoining the proposal. A small unnamed stream occurs along the western boundary of the site, in a north-westerly direction and is classified as a depositing/ lowland river. The site has hydrological connectivity to the Lower River Shannon SAC and the River Shannon and River Fergus Estuaries SPA via this unnamed stream and Drainage Ditches (FW4) that occur within the site along its western boundary. Section 3 of the AAD states that the Habitat Map (Figure 4.1) of the NIS shows a watercourse flowing along the southern boundary of the site which is referred to as a relevant watercourse but notes that this watercourse is shown as rising within the project site, flowing through the site to the Shannon Estuary, and has a directional arrow on the OSI 6” maps. The DAFM ecologist confirmed this their site visit by DAFM Ecologist (07/04/2022) and therefore as per Table 1 of the ERA it is considered an Aquatic zone and relevant mitigation measures were prescribed.

Both the Lower River Shannon SAC and the River Shannon and River Fergus Estuaries SPA are part of the Fergus Estuary WFD Transitional Waterbody IE_SH_060_1100 which was of Moderate Status in the period 2013-2018 and is now At Risk due to significant issues of nutrient and organic pollution from agriculture identified as diffuse phosphate loss to surface waters mainly in areas of poorly draining soils or in the case of the majority of this site, direct discharges to surface waters resulting in excess nutrients (elevated phosphate and ammonia).

The FAC noted the AAD mitigation measures and the conditions of the licence requiring mound planting and compliance with the DAFM standards and guidelines and is not satisfied that the DAFM made an error in its consideration of the application for a licence in respect of the protection of surface water quality.

Residential Amenity.

Impact on visual amenity from dwellings.

This ground of appeal contends that the proposed afforestation will impact on the visual amenity of the residential development in the area. The FAC noted the Clare County Development Plan 2017-2023 does not give a list of protected views and prospects but identifies that Designated Scenic Routes are where most of the scenic view and prospects are located, and that the R473 Regional Road north of Killadysert is not a Designated Scenic Route. The FAC further noted that the majority of the dwellings located along the northern side of R473 are between 350m and 600m. from the site and those on the southern side of the R437 circa 265m. The house closest to the western boundary of the site on the Crovraghan Road is circa 260m while the three houses east of the site on the Crovraghan Road the standard 60m setback applies and there is an additional biplot, Plot 12 at the rear of the houses.

The FAC noted that the houses, particularly on the northern side of the R473 are significantly higher than road level with views across the landscape to the Shannon Estuary and that while the view from the dwellings will change, given the distance between the houses and the proposed afforestation, and the fact that tree planting is an accepted feature in the rural landscape, the view from those dwellings will remain rural in character.

The FAC considers that the DAFM, having the benefit of the LVIA and the conditions of the licence requiring compliance with the FSM & ERA Guidelines had sufficient information before it to assess the visual amenity of residences in the area and has not erred in this aspect of the processing of the licence application.

Access.

This ground of appeal contends that the access is inadequate for the proposal, that the Crovraghan Road is used for recreation as a walking route and that the road floods. The FAC noted that the Site Details Report confirms that the applicant has stated that the site has adequate access to manage the site and that DAFM inspected the site. The applicant's expert witness stated that work on the initial afforestation would take 4 to 6 weeks work and involve the use of excavators for cultivation and a post-driver for fencing, and that there would then be no necessity for machinery on site until approximately year 15. The FAC noted that a condition of the licence excluded mound drainage from the majority of the site in favour of inverted mounds and in doing so the afforestation will not create additional surface water discharge that could contribute to flooding of the road. The FAC further noted that the conditions of the licence require compliance with the FSM which includes the *Forest Road Manual: Guidelines for the Design, Construction & Management of Forest Roads* (COFORD, 2005).

The FAC is not satisfied that the DAFM made an error in its consideration of the application for a licence in respect of these grounds of appeal.

Conclusion

In considering the appeals, the FAC had regard to the record of the decision, the submitted grounds of the appeals (as supplemented), submissions made at the oral hearing and the SoFs submitted by the DAFM. In accordance with Section 14B of the Agricultural Appeals Act 2001 (as amended) the FAC is satisfied that a serious or significant error or series of errors was made in the making of the decision regarding licence CN83176. The FAC is thus, setting aside the decision of the Minister and remitting it to require the DAFM to; carry out of a new Appropriate Assessment of the project to include an assessment of the effect the proposed afforestation will have on the hydrogeology of the area as it affects the two Natura 2000 sites for which the NIS was prepared, an In-combination

assessment that takes into consideration whether the effects of the proposal which might not be significant in themselves but could in-combination with other plans and projects result in a significant effect on a European site; to carry out of a new Assessment to Determine Environmental Impact Assessment (EIA) Requirement to reconcile the differences in the forest cover percentages as recorded in the Assessment to Determine EIA Requirement and that recorded in the In-Combination report, before the making of a new decision.

Yours sincerely,

Iain Douglas,
On Behalf of the Forestry Appeals Committee