



8th June 2023

Subject: Appeal FAC 161/2022 in relation to licence KY15-FL0046

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 and Hearing

A tree felling licence (KY15-FL0046) for the thinning of forest on an area of 118.21 ha at Cummeenavrick, Derrymaclavode, Derryreag, & Glashacormick, Co. Kerry was issued by the DAFM on 12th October 2022. 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 161/2022 was held remotely by the FAC on 18th May 2023. In attendance:

FAC Members: Mr. Seamus Neely (Chairperson), Mr. Luke Sweetman, & Mr. Derek Daly.

Secretariat 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 FAC has decided to set aside and remit the decision of the Minister for Agriculture, Food and the Marine to grant the licence KY15-FL0046. The reasons for this decision are set out hereunder.

Background

The licence pertains to the thinning of forest on 118.21 ha at Cummeenavrick, Derrymaclavode, Derryreag, & Glashacormick, Co Kerry. The forest is currently composed of Sitka spruce (mostly), Lodgepole Pine, Japanese larch, Ash, Sycamore, and Other Broadleaves. The application was accompanied by a location and felling (bio) map and a general Harvesting Plan. The applicant's pre-screening report shows that the project area lies in the River Sub-basins FLESK (KERRY)_020 (status GOOD) and FLESK (KERRY)_030 (status HIGH). The status of both waterbodies is based on monitoring. The project site is located on a mixture of mineral, peaty gley and blanket peat soils, with a moderate slope (<15%) with

elevation ranging from circa 190m to 360m and sloping in a south-westerly direction. The application was made on 11th October 2021, was advertised on 15th October 2021, and was referred to the National Parks and Wildlife Service (NPWS) on 23rd November 2021. The NPWS made no response on the application.

Applicant's Pre Screening report dated 19th January 2022

There is a Pre-Screening report from the applicant to be found on file dated 19th January 2022 which identified and examined eight Natura 2000 sites as below.

- Blackwater River (Cork/Waterford) SAC (002170)
- Kilgarvan Ice House SAC (000364)
- Killarney National Park SPA (004038)
- Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (000365)
- Mullaghanish Bog SAC (001890)
- Old Domestic Building, Curraglass Wood SAC (002041)
- St. Gobnet's Wood SAC (000106)
- Castlemaine Harbour SAC (000343)

This pre-screening exercise concluded that for the reasons set out in the screening and having regard to all of the information contained therein, that it has been determined that the project will have direct, indirect or in combination effect(s) on one Natura 2000 site the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC with which it has a 3.5 ha overlap.

Applicant's Natura Impact Statement (NIS)

The applicant submitted a NIS dated 19th January 2022 described as being for thinning project KY15-FL0046, located at Cummeenavrick and Glashacormick and Derrymaclavode and Derryreag, Co. Kerry. It sets out the qualifications of those involved in its preparation and the Legal Framework for NIS. It deals with the specific details for project KY15-FL0046 beginning at page 8 of the NIS. It sets out details of the project area, the habitat, soil makeup, slope of site, current stocking, and that a sub-compartment within one of the smaller harvest blocks in the southwestern section of the project area is entirely dominated by Ash as planted in 1993. This is said to be in addition to the western most section of the south-westerly harvest block of the project area which consists of Ash also planted in 1993. An overlap of the project with Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC is said to be present along the western boundary of several harvest blocks of the project area, totalling approximately 3.5ha. This area is said to consist largely of Ash (60%) planted in 1993 in addition to lesser areas of Sycamore (30%) as well as other broadleaves (10%) including Rowan and Birch.

It is stated that no operations will be undertaken within areas of the project site which overlap with the screened-in SAC (000365) and that a national road (N22) is located just south of the project area. A local road (L11674-15) connects the project to the national road and travels into the south-western section of the project area, traversing two harvest blocks before continuing north to transverse the north-western harvest block of the project area. Two existing forest roads (KY15R1018 and KY15R1017) serving the project area are connected to this local road. The NIS lists 8 Natura 2000 sites within 15km of the project area and are outlined below.

- Blackwater River (Cork/Waterford) SAC (002170) - No hydrological connection
- Kilgarvan Ice House SAC (000364) - No hydrological connection
- Killarney National Park SPA (004038) - Downstream hydrological connection
- Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (000365) - Hydrological connection
- Mullaghanish Bog SAC (001890) - No hydrological connection
- Mullaghanish to Musheramore Mountains SPA (004162) - No hydrological connection
- Old Domestic Building, Curraglass Wood SAC (002041) - No hydrological connection
- St. Gobnet's Wood SAC (000106) - No hydrological connection.

In addition, the NIS states that the following European Sites, which were excluded from the AA process at Pre-Screening stage, are also hydrologically linked to the project.

- Castlemaine Harbour SAC (Site Code: 000343) - Distance: 36.3 km
- Castlemaine Harbour SPA (Site Code: 004029) - Distance: 55.1 km

The NIS states that this project involves thinning described as a type of harvesting operation. All harvesting operations, it states, including thinning, are carried out in accordance with the DAFM Standards for Felling and Restoration (2019). Thinning is said to be undertaken to enhance the quality of a commercial crop of trees by removing or 'thinning out' poorer quality trees and that this also improves the growing conditions, available light, and nutrients for the remaining trees. Thinning of the stand, it states, involves cutting lines of trees at intervals through the crop and that these 'line thinnings' can also be supplemented by selecting individual trees either side of the line or rack. Thinning operations are described as being carried out by specialised mechanical 'cut to length' Harvesters and Forwarders which are used to extract the logs to the forest road.

The first thinning, it states, involves cutting a system of lines or racks plus a light selection of poorer trees from between the racks. Generally, 1 in 7 rows are removed to create thinning racks which creates the infrastructure for subsequent thinning operations. It sets out 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. The harvesting operator is said to cut and process each tree to create a brash mat from the branches and tops of the harvested trees along the rack. This brash mat protects the ground from the operation of the Harvester and Forwarder. The rack and brash mat will, according to the NIS, be maintained for future thinning operations. The NIS sets out that every effort is made to clear young conifers from stream buffer zones at first thinning stage and that this will allow the buffer zone along streams to revegetate naturally. It is stated that non-commercial broadleaves are retained as much as possible where it is safe to do so.

The NIS also states 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. Subsequent thinning operations are said to be carried out in a thinning cycle of 3 to 5 years and are conducted following consideration of the overall sensitivity of the site having regard to the sufficiency of available brash to adequately protect wet sites. Careful planning is

said to be required to negate ground compaction and brush management is essential to ensure a high-quality operation. Harvested logs are stacked carefully on roadside for removal by specialised hauliers as per Coillte guidelines. The NIS sets out that the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC 000365 is screened in and has an overlap of 3.5 hectares with the project area. The proposed mitigation is set out in Section 3, residuals are dealt with at section 4 and In-combination assessment is dealt with in Section 5. The collated Mitigation measures are set out in section 6.

Appropriate Assessment (AA) Screening Report and Determination dated 26th September 2022

The DAFM undertook and documented a screening for Appropriate Assessment (AA) dated 26th September 2022 which examines nine European Sites together with their qualifying / special conservation interests. The nine sites are as follows.

- Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC IE0000365. This European site is 0 m from the project.
- Blackwater River (Cork/Waterford) SAC IE0002170. This European site is 4.5 km from the project.
- Mullaghanish to Musheramore Mountains SPA IE0004162. This European site is 5.3 km from the project.
- Mullaghanish Bog SAC IE0001890. This European site is 6.3 km from the project.
- St. Gobnet's Wood SAC IE0000106. This European site is 6.5 km from the project.
- Old Domestic Building, Curraglass Wood SAC IE0002041. This European site is 8.9 km from the project.
- Kilgarvan Ice House SAC IE0000364. This European site is 12.1 km from the project.
- Killarney National Park SPA IE0004038 This European site is 14.3 km from the project.
- Castlemaine Harbour SAC IE0000343 This European site is outside of 15km from the project and is Hydrologically connected.

Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC IE0000365 was screened in for second stage AA and the other sites (eight) were screened out.

In Combination Assessment dated 23rd September 2022

There is a separate In-Combination report / document on file which has a statement included in it. It is dated 23rd September 2022. It is based on consulting various online planning systems and datasets (including DAFM's Forest Licence Viewer) on the same date in order to identify other plans and projects, focusing on the general vicinity of the project area in the River Sub-Basins FLESK (KERRY)_020 and FLESK (KERRY)_030. The In-Combination Report includes a project specific statement which has the following paragraph in it.

'It is concluded that there is no possibility that the proposed Thinning project KY15-FL0046, with mitigation measures set out in Section 4 of the AA Determination document, will itself, i.e. individually, give rise to an adverse effect on the integrity of any European Sites and their associated Qualifying Interests / Special Conservation Interests and Conservation Objectives. Therefore, there is no potential for the proposed project to contribute to any cumulative adverse effect on the integrity of any European Site(s), when considered in-combination with other plans and projects.'

Appropriate Assessment Determination (AAD) dated 6th October 2022

An AAD completed by an Ecologist on behalf of the Minister and dated 6th October 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 KY15-FL0046 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.

- Blackwater River (Cork/Waterford) SAC IE0002170: 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.
- Mullaghanish to Musheramore Mountains SPA IE0004162: Due to the separation distance, the absence of a direct hydrological connection, and subsequent lack of any pathway, hydrological or otherwise between the European site and the project.
- Mullaghanish Bog SAC IE0001890: Due to the absence of a direct upstream hydrological connection, and subsequent lack of any pathway, hydrological or otherwise.
- St. Gobnet's Wood SAC IE0000106: 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.
- Old Domestic Building, Curraglass Wood SAC IE0002041: Due to the absence of a direct upstream hydrological connection, and subsequent lack of any pathway, hydrological or otherwise.
- Kilgarvan Ice House SAC IE0000364: 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.
- Killarney National Park SPA IE0004038: Due to the separation distance between the Natura site and the project.
- Castlemaine Harbour SAC IE0000343: Due to the separation distance and the assimilative capacity of the water body between the Natura site and the project.

The report also sets out that in concluding the AA screening, the Minister has determined that there is the likelihood of thinning project KY15-FL0046 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).

- Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC IE0000365: Possible effect due to the location of the project within the Natura site.

The AAD report at section 3 sets out that the Minister determined that an Appropriate Assessment of the activity proposed under KY15-FL0046 was required in relation to the above 'screened in' European sites. The AAD report states that for this reason, the applicant submitted an NIS (completed 19th January 2022) to facilitate the Minister carrying out an Appropriate Assessment. It states that Niall Phelan, 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". The AAD report also states that.

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

- *the initial application KY15-FL0046, 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 does not record that the information provided in the NIS was sufficient to derive appropriate conditions for a determination. The AAD report at section 4 states the following.

'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 KY15-FL0046, 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'.

The report then goes on to detail the mitigation considered necessary for the project. In the penultimate paragraph of the AAD report the basis for the AA Determination is set out and in the copy of the AAD Report as made available to the FAC, there is a line redacted in this paragraph. The final paragraph in the AAD Report states the following:

'Therefore, the Minister for Agriculture, Food & the Marine has determined, pursuant to Regulation 42(16) of the European Communities (Birds and Natural Habitats) Regulations 2011 (as amended) and Regulation 19(5) of the Forestry Regulations 2017 (as amended), based on objective information, that no reasonable scientific doubt remains as to the absence of any adverse effect on the integrity of any European site.'

The Licence

The licence issued on 12th October 2022. It is subject to 8 conditions. Condition number 8 requires compliance with mitigation measures as set out in the AAD document which is said to be attached to the licence.

The Appeal

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

- That the Forest Service failed in its obligations under the Birds, Habitats, Environmental Impact Assessment and Water Framework Directives.
- That the cumulative assessment cannot in law be limited to five or three years.
- That the time-frames for consulting the public concerned on the environmental impact assessment report referred to in Article 5(1) shall not be shorter than 30 days.

DAFM Statement of Facts (SOF)

The DAFM provided a statement (SOF) to the FAC relating to the appeal and this SOF was provided to the parties. The SOF provided an overview of the processing of the application and the steps and dates involved. It sets out that the decision was issued in accordance with procedures, S.I. 191/2017 and the 2014 Forestry Act and that the Department is satisfied that all criteria outlined in its standards and procedures policy have been adhered to in making a decision on the application. It also records the relevant application processing dates, sets out that there were no submissions received from third parties, that the application was referred to the NPWS on 23rd November 2021 and that no response was received. It sets out a response to the grounds in the appeal which includes the following.

- That it is the position of the Department that clear-felling and replanting an already established plantation forest is a standard operational activity and does not involve an activity or project that falls within the specified categories of forestry activities or projects subject to the requirements of the EIA Directive.
- That the project was screened for AA and that an AA was carried out.
- It lists standards that conditions are based on including;
 - Forests & Water Achieving Objectives under Ireland's River Basin Management Plan 2018-2021 (said to be attached),
 - Environmental Requirements for Afforestation, December 2016 (DAFM, 2016),
 - Felling & Reforestation Standards (v. Oct. 2019) (see Forest Service Circular 14 / 2019),
 - Felling & Reforestation Policy (DAFM, 2017),
 - Appendix 21 of the Forestry Standards Manual (DAFM, 2015), which sets out the procedures regarding Hen Harrier and potential disturbance operations developed by the Forest Service of the DAFM and agreed by NPWS,
 - Forestry Standards Manual (DAFM, 2015),
 - AA Procedure Guidance Note & iFORIS SOP for DAFM Forestry Inspectors.

The SOF sets out the broad approach taken in the assessment of the application including that the licence application undergoes screening for AA by a Forestry Inspector which starts with the GIS analysis, and the

preparation of an 'In-combination Report' which looks at other developments and activities in the vicinity, including forestry operations. It states that this screening exercise 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 hydrological connectivity to European Sites (SACs) and separation distances for birds (SPAs). Hydrological connectivity assessment, it states, takes into account all existing aquatic zones and relevant watercourses and uses the EPA GIS tool, which includes catchment boundaries as well as rivers. In this case the AA screening exercise deemed that KY15-FL0046 was screened in for AA second stage for the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC IE0000365 because of possible effect due to the location of the project within the Natura site. It states that having screened in KY15-FL0046 the Department proceeded to second stage AA and that from this exercise an AAD was prepared setting out multiple mitigations arising from this exercise, on which the licence was based. These mitigations, it states, were targeted at protecting European Sites as well as water quality associated with this project area. The SOF at point 11 sets out that the licence application for KY15-FL0046 was for thinning only, so there is no replanting covered by this licence.

Consideration by the FAC

The FAC considered the grounds in the appeal in relation to the EIA Directive and related matters. 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 118.21 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 is not satisfied that an error had occurred in the making of the decision in so far as it relates to the EIA Directive.

The FAC finds that the project lands in this case lie within the River Sub-basins FLESK (KERRY)_020 (status GOOD) and FLESK (KERRY)_030 (status HIGH) and that the status of both waterbodies is based on monitoring. The proposal is for the thinning of the forest without clearfelling. 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. 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 and as referenced in the grounds of appeal.

The FAC considered the grounds in the appeal contending that the Forest Service failed in its obligations under the Birds Directive. The FAC considered the existing legislative safeguards in place with regard to the matters as raised in these grounds and that the Minister may attach conditions, including the erection of site notices and any other environmental or silvicultural requirements, as the Minister considers appropriate. The FAC further considered the nature, scale and location of the proposal being for thinning of trees on managed forest land, and the measures required by the DAFM and noted that the appellant did not submit any specific details in relation to bird nesting or rearing on the proposed site. The FAC finds that the granting of the licence for the thinning proposal in this case does not exempt the holder from meeting any legal requirements set out in any other statute. The FAC is satisfied, based on the information available to it, that the DAFM has not erred in its processing of the application KY15-FL0046 in so far as it relates to this ground of appeal.

The FAC considered the grounds of appeal relating to the AA of the project 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 NIS as submitted by the applicant and made specific reference to it in the DAFM AAD wherein it states,

'Accordingly, the Minister determined that an Appropriate Assessment of the activity proposed under KY15-FL0046 was required in relation to the above 'screened in' European sites. For this reason,

The applicant submitted a Natura Impact Statement (19th January 2022) to facilitate the Minister carrying out an appropriate assessment. Niall Phelan, 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".

The FAC finds that the DAFM has not indicated that it has adopted the NIS as submitted nor has it indicated the sufficiency or otherwise of the NIS, having assessed it, to fully inform an AAD relating to the project. In so far as the DAFM carried out its own AA screening of the likely effects of the project on European Sites and similarly carried out its own AAD of the project then the FAC considers that it follows that the NIS as submitted was not adopted by the DAFM as it relates to these two steps in the process. That being so the FAC would understand that there should be a separate DAFM AA Report relating to the likely effects of the project on European Sites and that this should have been available for public consultation for 30 days in advance of the making of the AAD. The FAC also noted that the DAFM AA screening post-dated the applicant's 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 the context of the above (absence of adopting applicant's NIS or the availability of an AAR) the DAFM has erred in its processing of the licence in so far as AA is concerned and that this constitutes a significant error.


The FAC finds that there is a separate In-combination report / document on file as completed by the DAFM which has a statement included in it. It is dated 23rd September 2022 and indicates that various online planning systems and datasets (including DAFM's Forest Licence Viewer) were consulted on the same date in order to identify other plans and projects, focusing on the general vicinity of the project area in the River Sub-Basins FLESK (KERRY)_020 and FLESK (KERRY)_030. It includes a project specific statement which has the following paragraph in it.

'It is concluded that there is no possibility that the proposed Thinning project KY15-FL0046, with mitigation measures set out in Section 4 of the AA Determination document, will itself, i.e. individually, give rise to an adverse effect on the integrity of any European Sites and their associated Qualifying Interests / Special Conservation Interests and Conservation Objectives. Therefore, there is no potential for the proposed project to contribute to any cumulative adverse effect on the integrity of any European Site(s), 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 AA 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. The FAC considered that this constitutes a further significant error in the processing of the application.

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 KY15-FL0046. The FAC is therefore setting aside and remitting the decision regarding licence KY15-FL0046 to the Minister to carry out a new AA screening 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