



20th May 2023.

Subject: Appeals FAC 123 and 124/2022 regarding CN87203

I refer to the appeals to the Forestry Appeals Committee (FAC) in relation to the above licence granted by the Minister for Agriculture, Food and Marine (DAFM). The FAC established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001, as amended ("the Act"), 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 appeals FAC 123/2022 and 124/2020 was held remotely by the FAC on 28/03/2023.

In attendance

FAC Members: Mr John Evans (Deputy Chairperson), Mr. Iain Douglas & Mr. Luke Sweetman
Secretary to the FAC: Mr Michael Ryan

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notices of appeal, the Statements of Fact (SoF) provided by the DAFM, and all other submissions received, and, in particular, the following considerations, the FAC has decided to set aside and remit the decision of the Minister regarding licence CN87203.

Background

An afforestation licence for 5.71ha at Kilgevrin, Co. Galway was issued by the DAFM on 16th August 2022. The licence decision pertains to the planting of 2.58ha of Sitka spruce, 1.89ha of Alder, and 0.46ha of Additional Broadleaves. The licence specifies 5 plots, two of which are to be unplanted bio-plots. The licence also includes provision for 590m of stock fencing. The materials on file indicate that the site is located either side of a local road near Tonmoyle bridge.

Documentation on file (in particular the Appropriate Screening Report and Determination dated 14/06/2022) describes the site as currently being agricultural grassland; located at ITM Coordinates 141100, 259603; partially located in the Lough Corrib Special Area of Conservation (SAC) [0297]; underlain by Grey Brown Podzolics and Brown Earths (48%), Surface Water Gleys and Ground Water Gleys (1%), Cutaway and Cutover Basin Peats and Blanket Peats (some) 51%. The Peat Soils are noted to be concurrent within aquatic zones within two plots along the southern eastern boundaries. The average slope across the site is given as moderate at 3%, ranging from 0% to 6% with a slight south easterly aspect. The site is noted to be in the Water Framework Directive (WFD) Clare (Galway)_020

sub-basin, and the Clare[Galway]_SC_030 sub-catchment which is part of the Corrib(30) catchment. An order 2 stream, the Baunmore 30 is noted as being located along the southern boundary of plot 3 (the southernmost plot on the site). An order 1 stream, the Kilgevin, is noted as being along part of the eastern boundary of plot 5 (the easternmost plot on the site). Both these streams are part of the Clare(Galway)_020 waterbody and are noted to provide hydrological connections (over various distances) to the Lough Corrib SAC [0297], the Lough Corrib Special Area of Protection (SPA) [4042], the Galway Bay Complex SAC [0268], and the Inner Galway Bay SPA. The Clare(Galway)_020 and the Cnocnagur_030_010 waterbody (which lies ca. 357m from the project site) are both noted to have an Unassigned status under the most recent WFD monitoring cycle at the time of the application.

Grounds of Appeal and Statements of Fact.

There are two third party appeals against the decision of the Minister to grant the licence. Several of the grounds of appeal are similar in the two appeals, which are on file and were considered in full by the FAC before arriving at its decision. The grounds of appeal are summarised as follows:

1. The appellants submit that all issues raised in an initial appeal have not been addressed or acknowledged. The appellants submit that this is a legal requirement and that they wish to get feedback. (FAC 123/2022 and FAC 124/2022).
2. It is submitted that the survey conducted on 25/05/2022 was carried out during a dry period, and that water flows cannot be determined during a drought (FAC 123/2022 and FAC 124/2022). The appellant in FAC 123/2022 further elaborates that there is a risk of landslide.
3. The appellants submit that the water setbacks stipulated in relation to the watercourse are irrelevant as the topography of the land has a steep slope. It is submitted that this will run into a spawning ground and acidity will damage the river whose contents flow to Lough Corrib. It is submitted that this was noted in a DAFM study which raised these concerns (FAC 123/2022 and FAC 124/2022). The appellant in FAC 123/2022 also observes that a tractor cannot travel up the slope during the winter as the ground is too wet, and that all rainwater and run-off from neighbouring properties and roadways runs across the land in winter. The appellant in FAC 124/2022 also queries whether, in light of unpredictable rainfalls, DAFM will inspect each time herbicide is applied.
4. The grounds of appeal include submissions that the proposed afforestation will cause disruption to the local ecosystem which it is submitted is home to a number of species including bats and hen harrier (FAC 123/2022 and FAC 124/2022).

The remaining grounds are submitted by the appellant in FAC 124/2022.

5. It is submitted that the proposed development will adversely impact on light to the appellant's property, that this will impact growth on the appellant's lands, safety while working, and that it will impinge on future dwelling house development. The appellant further submits that the proposal will have, and already is having, an impact on their well-being.

6. The appellant submits that the documentation of the processing of the licence include an admission that the possibility of adverse effects on Lough Corrib SAC IE0000297 cannot be ruled out.
7. The appellant submits that the NPWS study clearly states that plots 1 and 3 are inappropriate for planting.
8. It is queried by the appellant whether DAFM can guarantee that an inspector will be present each time traffic enters to site in order to prevent risk of invasive species and that the risk of such species is referenced in the documentation.
9. The appellant submits that no setback has been applied to Plot 1, and that there are interconnected drains that would require a setback – making the specified 20 meter setback inadequate.

In relation to the grounds of appeal noted in the ground (1) above, the FAC note that no previous appeal has been received on CN87203, and these grounds are taken to be a reference to the appellants' submissions on the original licencing process.

The DAFM provided an SoF for each appeal. These are on file and were considered by the FAC before arriving at its decision. These do not directly address grounds, but rather provide a summary of the processing of the licence from both an administrative and inspectorate perspective. The SoFs observe that two Forestry Inspectors were involved in the processing of the licence due to DAFM Forest Service boundary changes. The SoF also states that the application was desk and field assessed with a field inspection having taken place on the 13/11/2020.

DAFM Assessment

Referrals and submissions

The application was referred to Galway County Council on the 08/09/2020 and the 31/10/2020, with no response received on either occasion.

Referrals were also made to the NPWS on the same dates, with a reply received on the 9/11/2020. This notes that plots 1 and 3 are contiguous with Baunmore River which is a part of Lough Corrib SAC (0297). The risk of deterioration of water quality through disturbance and mobilisation of soils and sediment, and changes to chemical composition of the hydrological system is highlighted. Also highlighted are steep slopes in Plots 1 and 3, and it is noted that the planned use of herbicide in Year 1 has a risk of negative impacts and that there is a risk of acidification of water courses from mature conifer canopies. The response also refers to the need for consideration of cumulative and in combination effects on a Natura site.

The application was also referred to An Taisce on the same dates as the other referral bodies. Responses, featuring the same content, were received on the 25/09/2020 and 30/11/2020. These also highlight that the application lies adjacent to Lough Corrib SAC. It is suggested that Appropriate Assessment is required for Leannan SAC (2671). As this SAC is in County Donegal, the FAC assume this reference was in error. This response also observes that that setbacks to watercourses are required, and points out that a number of existing drains and channels are not shown on OS 6 inch maps. An Taisce

recommend that given the mineral soil on the site a setback of at least 10m from an aquatic zone, and a 5m setback from water courses, and observe that the setbacks indicated in the application are less than those recommended in the Environmental Requirements for Afforestation Guidelines (DAFM, 2016).

There are twelve submissions from members of the public on file and recorded on the FLV, nine of which can be seen to contain the same information and focus on issues similar to the grounds of appeal. A further submission is also reflective of the grounds of appeal. Two submissions focus on the obligations of the Forest Service of DAFM under EU and national law and adherence to associated good practice in the processing of a consent. On preliminary examination of the appeal by the FAC it was noted that one of these submissions was incorrectly labels as a "species map". Following a query to the Forest Service by the FAC, this was subsequently re-uploaded to the FLV as a "submission" on the 23/03/2023.

The application

Application documentation submitted and available to the FAC on the FLV includes: an undated Location Map based on Ordnance Survey Ireland maps showing the location of the site with reference to the local road network and topography; an undated photograph of the site notice in situ; a close up photo of the site notice in-situ showing the afforestation area (5.71ha) and a date of 31/08/2020; another Site Notice with the same details as the close up in-situ photograph; and additional undated photograph of a site notice in situ (in a different location to the previous photograph); a further close up photograph of a site notice showing the same details as the previous close up photograph; a fencing map dated 31/08/2020 showing the location of stock fencing and the route of a power cable traversing the site. The FLV shows all these documents as having been uploaded on the 31/08/2020. Also on file is a map entitled Bio Map (Form 1) dated the 31/08/2020. This shows the location of two site notices, an aquatic zone, a house requiring a 60m setback, a derelict house requiring a 30m setback, cultivation direction and the location of a road requiring a 10m setback, and the location of large trees and shrubs to be retained. The boundaries of plots within the site are shown but not labelled, and various features are noted in a table referring to plots 1,2, 3 and 4. This map is shown on the FLV as having been uploaded on the 31/01/2023. There is also on file a further Biomap dated the 20/01/2021 and marked on the FLV as having been uploaded on that date which shows similar information to the Biomap previously described above, with the addition of further aquatic zones, aquatic setbacks and hedgerow setbacks. This map also references plots 1,2,3 and 4, with the boundaries of four internal plots shown but unlabelled.

Also on file is an Information Request issued by DAFM on the 26/11/2020. This requests a redesign of the proposal for the purposes of reducing visual impact, a change of one plot to native broadleaf species for riparian purposes with no fertiliser, cultivation or chemical use, and the inclusion of an additional native species plot in the existing plot adjoining the SAC.

A map labelled as a species map is on file dated the 30/11/2020 showing 5 plots. The layout of the site shown in this map is similar to the Biomap referenced above, with the largest plot in that map now divided into two. All five plots are labelled 1 through to 5. The larger of these is labelled as comprising mainly of conifer species with some broadleaf planting. The smaller of the new plots is noted as being comprised of broadleaf species, and this broadly follows the line of the portion of the Lough Corrib SAC which adjoins the east of the project site. A further plot is marked as comprising broadleaf species. The

two remaining plots are marked as biodiversity plots which can be observed to be proximate to several buildings as per the details on the Biomap.

Ecology Report and Appropriate Assessment

An Appropriate Assessment Screening and Determination (AASD) is on file dated the 14/06/2022. The report, prepared by a consultant ecologist on behalf of the DAFM records the presence of 10 European sites which lie within 15km of the site, or with potential hydrological connectivity. For each of these sites, the potential for impact arising from the project is considered, and with the exception of the Lough Corrib SAC, the sites are screened out for requirement for Appropriate Assessment with reasons provided. In the case of the Lough Corrib SAC [IE0000297], the AASD concludes that there is potential of possible effect on aquatic and semi-aquatic qualifying interests of that European site, and that disturbance of otter cannot be ruled out. On this basis, the AASD determines that an Appropriate Assessment of the potential impact of the project on the Lough Corrib SAC is required. The AASD also notes the WFD status of a number of waterbodies that are proximate to the project sites, including the Clare (Galway)_020 and Cnoicnagur_03_010, as being unassigned.

The AASD makes reference to, and relies on, an assessment of in-combination effects. An In-combination report is included as an Appendix to the AASD, and references searches of various planning systems on the 31/05/2022. This concludes with an In-Combination Assessment, which amongst other findings notes that:

It is concluded that there is no likelihood of the proposed afforestation project CN87203 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.

An Appropriate Assessment Report (AAR) is on file, also dated the 14/06/2022 and prepared by a consultant ecologist on behalf of the DAFM. This considers the Qualifying Interests for the Lough Corrib SAC, and potential impacts which may arise from the project on them. Where potential impacts are identified, mitigating actions are proposed. The AAR also relies on an in-combination assessment, and this makes a similar conclusion made in the AASD in relation to in-combination effects.

A separate Appropriate Assessment Determination (AAD) document is on file also dated the 14/06/2022. This summarises the outcome of the screening process documented in the AASD, and also the documents and information carried out in the preparation of the AAR. The mitigations proposed in the AAR are carried forward to the AAD and it is concluded that the proposed project, individually or in combination with together plans or process will not impact on the Lough Corrib SAC if those mitigations are implemented.

An ecology report, prepared by a Forest Service ecologist, is on file dated the 15/06/2022. This notes the presence of bog habitat proximate to the site and potential habitat for bats. A number of hedgerows and notable trees already present on the site are also noted. The report recommends several mitigations, principally in the form of setbacks and adherence to Forest Service Standards.

Inspector's Certification and assessment for EIA Requirement

A number of documents are on file associated with the Inspector's certification of the project including the assessment for Environmental Impact Assessment (EIA) requirement.

A Site Plots – Pre-Approval Report bearing a date of 16/08/2022 records details for 5 plots with the proposed planting types for each indicated. A Site Details – Pre-Approval Report, also bearing the date 16/08/2022 is on file. This notes that there is adequate access to the site and that the site notice has been erected. A number of other details are also captured including that the site is not exposed, is currently in agricultural use and consists of grass rush vegetation.

An Assessment to Determined EIA Requirement is on file bearing a date of 16/08/2022 and recording a certification date of 11/08/2022 and referencing a spatial run date of 11/08/2022. In response to the question "Will adherence of this proposal to the Forestry and Water Quality Guidelines, and any additional conditions attached to the approval be sufficient to prevent any potential significant impact to aquatic zones and their Q value" an answer of N/A is recorded. In the Inspector's Comments section, this answer is expanded as meaning "Not Answered/Not Answerable at this stage". The comment box includes the note that "WRT Q28, the dwelling setback Plot, although revised, should be extended further to reduce visual impact for adjoining dwellings." Although the questions are not numbered on this document, this is taken by the FAC to be a reference to the question "Is the site in any other High Amenity Landscape". The document concludes that the application should not be subject to Environmental Impact Assessment.

An Inspector's Certification Report is on file bearing a date of 16/08/2022 and noting a Certification date of 11/08/2022. This includes several recommended conditions, including adherence to the mitigations set out in the AAD. In other Comments/Field notes the following are recorded:

13/11/2020: Inspected. No Signs found. Dry fertile mineral sloping to SAC River. No floodable flats. Northern field is deep peat soil, but drained and improved, GPC3 Grass Rush. ESB line slightly incorrect. Planting with SS will have visual impact in time, both to dwellings due north and from a distance. Numerous submissions noted, conclusion is that signs were in place originally. NPWS input noted.

These documents, together with the licence as discussed below, were uploaded to the FLV on the 16/08/2022.

The licence

The licence was issued by DAFM by way of an approval letter on the 16/08/2022. It contains a number of conditions which refer to good practice and guidelines. It is a condition that the mitigations detailed in the AAD be adhered to. While several the mitigations set out in the AAD are similar to those set out in the Ecology Report, not all mitigations set out in that document are included in the licence, in particular those relating to the protection of bat habitat. It is a condition that herbicide not be applied if heavy rainfall is predicted, or during heavy rainfall and/or high winds.

Consideration of FAC

In the first instance, the FAC considered the record of the decision as presented on the FLV, and in so doing also considered the SoFs provided by the DAFM. The committee noted that several maps were provided by the applicant in the course of the process of determination carried out by the DAFM. The licence issued refers to the project having 5 plots. The earliest map on the record in which plot boundaries are marked is the Bio Map dated 31/08/2020, which shows four plots, however these are not labelled. The earliest map on the record in which the plots are numbered is the species map dated the 30/11/2020 which shows 5 plots. The FAC note that the application was referred to NPWS on the 08/09/2020 and again on the 31/10/2020, with a reply received on the 9/11/2020. This makes specific reference to plots 1 and 3 as being contiguous with the Baunmore River. This suggests that NPWS had access to a map showing plot numbers which does not appear to be on the record of the decision. The FAC further note that the Bio Map (Form 1) dated the 31/08/2020 is given as being uploaded to the FLV on the 31/01/2023, and that this suggests it was not available for either the first or second public consultation periods which were initiated on the 07/09/2020 and 27/06/2022 respectively (as per the SoFs provided DAFM). While the FAC note that the Bio Map was superseded in the application process before the 2nd consultation period, the committee notes that this second consultation took place over 21 months after the first, and that no submissions were received during this second period, nor is there any record on file of the DAFM notifying those who made submissions in the original period of the second period of consultation, and there was no requirement placed on the applicant to re-erect site notices.

The FAC also noted that the AAD contains reference to an Ecology report being provided to the DAFM Forest Service on the 30/05/2022 and the 07/6/2020, but that there is only one Ecology report on the record dated the 15/06/2022 and uploaded to the FLV on the 16/06/2022. The AAD also states that further details are to be found "Table 4 of the accompanying AA Screening Determination and Contacts on IFORIS for more information". The fourth table of the AASD contains some references to the findings of the ecologist. The FAC understands that IFORIS is an internal DAFM system, which is not available to the FAC or members of the public.

The FAC consider that the foregoing raise concerns on the legitimacy of the record of the decision and the opportunity for members of the public to consider and make comments on same, and that this represents an error in the decision-making process.

The FAC considered the ground that issues raised in an initial appeal have not been addressed or acknowledged. As noted previously, the FAC is not aware that this application has been previously appealed and take this to be reference to submissions made as part of the original consultation process. The FAC are not aware of any legal obligation on the DAFM to respond to specific issues raised in submissions.

The FAC considered those grounds of appeal relating to water quality generally. At the outset, the FAC noted that the AASD records the WFD status of a number of waterbodies that are proximate to the project sites, including the Clare (Galway)_020 and Cnocnagur_03_010, as being unassigned. Based on an examination of publicly available information from the EPA, the FAC is aware that these waterbodies have recently been assigned a status of Good and Moderate respectively. However, at the time of the

decision, as no status had been assigned, the FAC consider that it would not have been possible for a determination to be made of the possible impact of the project on those waterbodies one of which immediately bounds the project site. The FAC made this conclusion having regard to the High Court judgement by Ms. Justice Hyland on the 15th of January 2021 (2018/740 JR). On this basis, the FAC conclude that an error was made in the processing of the licence.

The appellants submit that the survey conducted on the 25/05/2022 was carried out during a dry period, and that water flows cannot be determined during a drought. The FAC note that this survey was carried out by a qualified ecologist, and the committee does not consider that an error was made in this regard.

The appellant in FAC 123/2022 further elaborates that there is a risk of landslide, but provides no basis for this contention. The FAC do not consider that evidence has been presented that issues of landslide risk are a factor in this application.

The appellants submit that the water setbacks stipulated in relation to the watercourse are irrelevant as the topography of land has a steep slope. The FAC note that revised maps were provided to the DAFM and that these include setbacks and planting requirements for native species of trees along the course of watercourses, and that the licence contains conditions designed to protect the water quality of the noted aquatic zones. The FAC does not consider that an error was made by the DAFM in this regard.

The appellant in FAC 124/2022 also queries whether, in light of unpredictable rainfalls, DAFM will inspect each time herbicide is applied. The FAC note that the licence contains a condition to not apply herbicide if heavy rainfall is predicted, or during heavy rainfall and/or high winds. A further condition requires the application of all pesticides (including herbicides) to adhere with the measures set out under sections 3.7.3, 3.7.4 and 3.7.5 of the Environmental Requirements for Afforestation (DAFM 2016). The FAC note that sections 3.7.3 and 3.7.5 in turn stipulate adherence to the *Forest Protection Guidelines* and *Guidelines for the Use of Herbicides in Forestry* (DCMNR 2002). Both documents provide details on the use of herbicides including a prohibition of their use in certain circumstances such as proximity to watercourses and record keeping. However, the FAC note that the neither the licence nor the guidelines provide a definition of what constitutes heavy rainfall, and that in the absence of such a definition, this represents a condition of the licence which the licence holder would be unable to definitively comply. The FAC consider that the absence of such a definition represents an error in the licence.

The grounds of appeal include submissions that the proposed afforestation will cause disruption to the local ecosystem which it is submitted is home to a number of species including bats and hen harrier. In relation to Hen Harrier no basis is presented for the assertion that Hen Harrier may be at risk. A further ground of appeal notes that the documentation of the processing of the licence indicates that the possibility of adverse effects on Lough Corrib SAC cannot be fully ruled out. The FAC note that the application was subject to an appropriate assessment process, as discussed more fully below in this letter, and that a number of potential adverse effects were identified with mitigations proposed. The FAC conclude that the identification of possible adverse effects is proper part of the Appropriate Assessment process and does not represent an error in the processing of the licence.

The Appropriate Assessment process identified that the proposed project represents a potential risk to otter, which is a qualifying interest of the Lough Corrib SAC, including potential for disturbance from works undertaken close to the aquatic zones adjacent to Plots 3 and 5. The AAD includes a mitigation, which forms part of the licence, that the SAC outside of Plots 3 and 5 is not to be accessed as part of project works, and that a 20m set back is to be applied from the aquatic zones adjacent to these plots. The FAC is satisfied that these mitigations are designed to protect against disturbance of otter and other aquatic species.

The Ecology report prepared by a DAFM ecologist identifies that the site contains potential bat roosts and commuting and feeding corridors in the form of hedgerows/treelines and aquatic zones, and concludes that negative impacts on bat species cannot be ruled out. The report also notes the presence of additional hedgerows, a treeline and additional mature trees to those included in the maps provided by the applicant. A map is provided in the report which shows, amongst other things, a recommended 5m setback from the hedgerows on the west of the site with 3 rows of broadleaves adjacent to the outside of the setback. The licence includes a condition that the mitigations in the AAD be complied with, but does not make specific reference to the Ecology report or the mitigations contained therein. The mitigations detailed in the AAD are focused on mitigations for the protection of the Lough Corrib SAC, and not the protection of species local to the site. A number of mitigations suggested in the AAD coincide with those proposed in the Ecology Report, but those mitigations for the protection of bats are not fully encompassed within the mitigations detailed in the AAD. The AAD makes reference to the revised Bio Map dated 0/01/2021 with respect to protection of hedgerows but does not consider the additional hedgerows identified and associated mitigations suggested in the Ecology report dated the 15/06/2022. The FAC consider that this represents an error in the processing of the licence with respect to the protection of bat species.

It is submitted by an appellant that the proposed development will adversely impact on light to the appellant's property, that this will impact growth on the appellant's lands, safety while working, and that it will impinge on future dwelling house development. The FAC notes that dwelling and other setbacks have been applied, and that two plots are to be biodiversity plots with no planting. No evidence of planning applications has been submitted, and any future development will be a matter for the appropriate planning authority at the time. The FAC find that no error was made in the processing of the application with respect to these grounds of appeal.

It is also submitted by an appellant that the response from NPWS indicated that plots 1 and 3 are inappropriate for planting. The FAC observed that the plots referred to in the NPWS were stated to be adjacent to the Lough Corrib SAC, and that subsequent to the response a revised plan had been submitted to the DAFM. This revised plan included a new plot adjacent to an area of bog to the north and east of the site. Those plots in the revised plan adjacent to the SAC feature substantial setbacks with planting of native species of broadleaf stipulated. The FAC are satisfied that the response of the NPWS has been considered and that no error was made with respect to this aspect of the processing of the application.

It is queried by an appellant whether DAFM can guarantee that an inspector will be present each time traffic enters to site in order to prevent risk of invasive species and that the risk of such species is

referenced in the documentation. The FAC note that the licence includes a condition requiring adherence to the mitigation measures set out in the AAD, and that these include a requirement that the licence holder ensure that all vehicles are clean and free of soil and plant debris before entering and leaving the site as a biosecurity measure. The FAC consider this is a reasonable condition to be applied to the activities that will take place at afforestation stage and that no error took place in the processing of the application with respect to this ground of appeal.

The appellant submits that no setback has been applied to Plot 1, and that there are interconnected drains that would require a setback – making the specified 20 meter setback inadequate. The FAC note that the site was visited both by a Forest Service Ecologist and Inspector. The Ecology report notes the presence of a dry and well vegetated ditch along the eastern boundary. The Inspector's Certification makes reference to the ground conditions and notes no drains of relevance to the application. The proposal as licenced includes significant setbacks and planting requirements for native broadleaves between proposed conifer planting and aquatic zones. The FAC is not satisfied that the DAFM made an error in respect of this aspect of the processing of the application.

In addressing the grounds of appeal, the FAC also considered the requirements of the EIA and Habitats Directives, the completeness of the assessment of the licence application, whether there was an adequate assessment of cumulative effects and an examination of the procedures applied which led to the decision to grant the licence.

The decision before the FAC relates to the afforestation of 5.71 hectares which is substantially below the 50ha threshold for mandatory EIA as set out for afforestation applications in the Irish Forestry Regulations 2017 (S.I. 191 of 2017). The regulations also provide that the EIA should be carried out for projects below the specified parameters where the Minister considers such development would be likely to have significant effects on the environment. In order to determine this, the DAFM carried out an Assessment to Determine EIA requirement. This considered the project across a wide range of categories, including Archaeological, Land Use, Water, Protection of Freshwater Pearl Mussel, Landscape, Designated Habitats and Cumulative effect, and concluded that an EIA is not required. The questions that relate to Cumulative effect only related to forestry projects and do not consider other types of projects. The FAC note that a separate process was carried out for Appropriate Assessment on European sites which include an in-combination assessment of other plans and projects (including, but not limited to, forestry projects). 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 Appropriate Assessment in-combination report.

The FAC noted that in carrying out the assessment to determine EIA requirement, the Minister relied on Forest Service guidelines in relation to water quality, landscape, and archaeology but these guidelines have not been attached as conditions to the licence. Furthermore, licence Condition 2 requires adherence to the *Environmental Requirements for Afforestation (ERA)*. The ERA document states that it replaces a suite of Forest Service guidelines, including those relating to water quality, landscape, and archaeology. The FAC consider that there should be consistency across those documents being relied upon to support the processing of the application and the grant of a licence.

The FAC further considered the Appropriate Assessment of the project as required by the EU Habitats and Birds Directives beyond those matters raised in the grounds of appeal and addressed above. The Directives require that any plan or project not directly connected with or necessary to the management of a European site but likely to have a significant effect on it, either individually or in combination with other plans or projects, must be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. Furthermore, the competent authority can only agree to the plan or project after having ascertained that it will not adversely affect the integrity of the site concerned. Part 8 of the Forestry Regulations 2017 require the Minister to screen and to undertake an Appropriate Assessment in relation to specific applications. The FAC examined the record and statement from the DAFM and the information as uploaded to the FLV to inform the general public as to the content of the application including that relating to Appropriate Assessment. As noted above, an ecologist carried out an Appropriate Assessment Screening Report and Determination. In this it was concluded that the proposed project will not have any significant effect, alone or in combination with other plans and projects, on a number of the considered European Sites with the exception of the Lough Corrib SAC. On this basis, it was determined that the project will not adversely affect the integrity of those European Sites. This included an In-Combination Assessment based on a search of planning systems on the 31/05/2022.

In considering the Appropriate Assessment process, the FAC noted that other plans and projects are recorded in the In-combination statement which was prepared in relation to the project and that this was relied on in the screening element of the process. The statement includes the passage,

It is concluded that there is no likelihood of the proposed afforestation project CN87203 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 would understand that the consideration of other plans and projects should take place as part of the process to ascertain whether the project, either individually or in-combination with other plans or projects, is likely to have a significant effect on a European site and in the Appropriate Assessment of the implications of the project and such effects on the European site, having regard to the conservation objectives of the site concerned. As stated on the record, it appears to the FAC that the potential for significant effects to arise from the proposal in-combination with other plans and projects were not considered. The FAC would consider that this is not in keeping with the requirements of the Forestry Regulations 2017 and Article 6(3) of the EU Habitats Directive.

The FAC considered this to be a significant error as it demonstrates that the DAFM did not consider effects that might arise from the project which were not significant in themselves but which in-combination with other plans and projects might result in a significant effect.

In considering the appeal in this case the FAC had regard to the record of the decision, the submitted grounds of appeal, and all submissions received. The FAC concluded that a serious or significant error or series of errors were made in the making of the decision in respect of licence CN87203. The FAC is

therefore setting aside and remitting the decision regarding licence CN87203 to the Minister to carry out a further period of public consultation, with the complete record of the decision to be available including all relevant maps, and that all those who made submissions be notified of the public consultation period. The FAC also is of the view that the Minister should direct the applicant to re-erect site notices in line with Regulation 11(3) of the SI 191/2017 (Forestry Regulations 2017). The FAC is also remitting the decision to the Minister to carry out an Appropriate Assessment screening of the proposal itself and in combination with other plans or projects, and an assessment of EIA requirement in light of the revised WFD monitoring status applied to local waterbodies, before a new decision is made. In the event that a decision is taken to grant a licence, the mitigations proposed in the Ecology Report with respect to bats should be considered and appropriate guidance with respect to the application of conditions relating to rainfall should be provided.

Yours sincerely,

John Evans On Behalf of the Forestry Appeals Committee