



4<sup>th</sup> October 2023

**Subject:** Appeals FAC 033 - 037/2022 against licence decision CN89294

Dear

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

#### **Hearing and Decision**

Having regard to the particular circumstances of the appeals, the FAC considered that it was not necessary to conduct an oral hearing in order to properly and fairly determine these appeals. A hearing of the five appeals (FAC 033 - 037/2022) was held remotely by the FAC on 31<sup>st</sup> August 2023. In attendance:

FAC Members: Mr. Seamus Neely (Chairperson), Mr. Iain Douglas, & Mr. Vincent Upton.  
Secretary to the FAC: Ms. Vanessa Healy.

Having regard to the evidence before it, including the record of the decision, the notices of appeal, and submissions received, the Forestry Appeals Committee (FAC) has decided to set aside and remit the decision of the MAFM to grant the licence CN89294. The reasons for this decision are set out hereunder.

#### **Background**

The licence decision under appeal pertains to the construction of a forest road of 960 metres in length in the townlands of Larkfield and Tawnymanus, Co. Leitrim. The application was submitted on 20/07/2021 and describes the soil type at the proposal area as mineral and the slope is described in the DAFM District Inspector's Appropriate Assessment Screening Report (AASR) as predominantly steep (15% to 30%). The area to be serviced by the road is stated to be 9.52 ha and the proposal area is described as being in the River Sub-Basin Bonet\_040. The DAFM Appropriate Assessment Report (AAR) dated 24/11/2021 on file describes the project as a 920m proposed forest road planned to facilitate thinning operations for a forest area of approximately 9.52 hectares. It also states that the road is to be built by excavation and that the project area is situated on a very steep (>30%) slope and is comprised of 84% surface/groundwater gleys (shallow) and 16% surface/groundwater gley soils. It states that the project is traversed by a RWC (Relevant Water Course) which travels approximately 900m before discharging into the Larkfield aquatic zone and therefore providing a hydrological connection with Lough Gill SAC via the BONET\_040 sub basin.

The record shows that there is on file an Appropriate Assessment (AA) screening report which does not record a date of completion and bears a date of 22/03/2022. It describes the project as 960 metres of forest road works. Seven Natura 2000 sites are examined in the report and are all screened out for AA with reasons given as "Other factors, AS per AAD". The overall conclusion recorded in the report is that there is no likelihood of a significant effect on any European site, and that Appropriate Assessment is not required.

The record also shows that there is on file an AA report (AAR) dated 24/11/2021 completed by Niall Phelan, Environmental Facilitation Ltd on behalf of the MAFM. It is marked as being "*Appropriate Assessment Report for Forest Road construction project CN89294, located at Larkfield & Tawnymanus, Co. Leitrim*". The AAR states in the introduction that

*'The proposed Forest Road construction project (CN89294) is not directly connected with or necessary to the management of any European Site. Having carried out an Appropriate Assessment screening, it has been determined, on the basis of objective scientific information, that the project, individually or in combination with other plans and projects, is likely to have a significant effect on:*

➤ *Lough Gill SAC 001976.*

*Therefore, an appropriate assessment must be carried out in respect of the project by the Minister for Agriculture, Food and the Marine under the European Communities (Birds & Natural Habitats) Regulations 2011 (S.I. No. 477/2011), as amended, and the Forestry Regulations 2017 (S.I. No. 191 of 2017), as amended'.*

The AAR describes the project as a '920m proposed forest road' while the In-Combination report as included at section 6 of the AAR describes the project as being 960 metres and being of medium scale. The record also shows that there is an AA Determination (AAD) dated 24/01/2022 on file as completed by Niall Phelan on behalf of the MAFM. It lists the six sites referenced in the AAR as being screened out as follows,

- Boleybrack Mountain SAC IE0002032,
- Arroo Mountain SAC IE0001403,
- Ben Bulben, Gleniff And Glenade Complex SAC IE0000623,
- Lough Melvin SAC IE0000428,
- Sligo/Leitrim Uplands SPA IE0004187, and
- Lough Melvin SAC UK0030047.

It lists Lough Gill SAC 001976 as being screened in and concludes that the Minister has determined that there is the likelihood of Forest Road Construction project CN89294 having a significant effect, either individually or in combination with other plans and projects, on the Lough Gill SAC IE0001976 due to the

identified hydrological connection to the project. It states that the project area is 2km upstream from this European site. Section 4 of the AAD sets out mitigation measures A-AA and that the proposed road construction works will be carried out according to best practices, adhering to the CIRIA Good Practice Guidelines and taking into account the following publications:

- CIRIA Control of water pollution from linear constructions projects. Site Guide (C949D),
- Forestry and Water Quality Guidelines (DAFM, 2000a) - p9 Roads,
- Forest Harvesting and Environmental Guidelines (DAFM, 2000b) - p10 Road Planning Guidelines,
- Forest Operations and Water Protection Guidelines” (Coillte, 2013),
- Coford Forest Road Manual (Ryan et al., 2004),
- Technical Standard - Design of Forest Entrances onto Public Roads (DAFM, 2020),
- Guidelines on Protection of Fisheries during Construction Works in and Adjacent to Waters (2016),
- Forestry and Otter guidelines (Department of Agriculture, Fisheries and Food, 2009).

It also sets out the basis for the AAD as follows.

*“ This 920m proposed forest road is planned to facilitate thinning operations for a forest of approximately 9.52 hectares. The road is proposed to be built by excavation. The project is traversed by a RWC which travels ~900m to BONET\_040 (WFD Status: Not at risk, Ecological Status: Good) 1. From this point, the aquatic zone travels ~2km to Lough Gill SAC. Otter is a qualifying interest of this SAC and records can be seen ~5km hydrological distance from the project area. The project area (PA) is situated on a slope ranging from steep (15-30%) to very steep (>30%) and is comprised of 84% surface/groundwater gley soils (shallow) and 16% surface/groundwater gley soils. Appropriate aquatic zone and watercourse measure protections have been set out including specific otter measures and good practice aquatic measures for the relevant designated features. The above conditions in combination, along with strict adherence to the guidance cited, will eliminate pathways of impact of significance to European sites.*

*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”.*

There is a further In-Combination assessment report dated 10/03/2022 which contains a statement.

### **Appeals**

There are five third party appeals against the decision to approve licence CN89294 and the full grounds of these appeals and submissions received by the FAC have been provided to the parties concerned. The DAFM informed the FAC that the documents required under the Forestry Appeals Committee Regulations 2020 are provided through the Forestry Licence Viewer (FLV) and the parties were notified of this. A brief summary of the grounds of the five appeals is set out below.

**FAC 033/2022 –**

- Grounds Raises Application / Documentation Issues,
- Submits that the BioMap has not identified an area of European Annex I Habitat and that the proposal runs through an area of pNHA not shown on Bio Map,
- Submits other BioMap failures in relation to the showing of features,
- Raises issues with Rights of Way,
- Submits that issues raised at submission stage have not been addressed,
- Submits that Licence Conditions do not provide clarity to the local residents,
- Submits that a requirement to Consult Residents is too loose,
- Submits that DAFM should have sight of an agreement with local residents in advance,
- Submits errors in the EIA Screening,
- Draws attention to differences in forest cover between that shown on the EIA screening document and that shown in the In-Combination Assessment,
- Raises a lack of closure on the noise objection relating to EIA screening requirement,
- Submits that EIA screening is pre-determined,
- Inspectors Certifications - Queries need to record new Bio Map,
- Appropriate Assessment – submits the screening out of Lough Gill SAC in DI's screening as a serious error,
- Submits that mitigations do not provide necessary degree of certainty,
- Oral Hearing is Requested.

**FAC 034/2022 –**

This appeal lists the main grounds in handwriting as,

- Application is not legally valid,
- Submits that there is not a right of way from Rock Road,
- Submits that conditions do not provide clarity for residents,
- Raises issues with the Inspectors Certification,
- Raises issues with Appropriate Assessment and EIA Screening.

This appeal also includes broadly the same grounds in typed format as is set out in FAC 033/2022.

**FAC 035/2022 –**

This appeal lists the same grounds as is set out in FAC 033/2022, and

- Submits that the ROW is broken at folio 15578 which the appellant in this appeal states she is owner of.

#### **FAC 036/2022 –**

- States that the grounds were set out in the ‘original appeal’ (which the FAC understands to be a submission made to DAFM during the processing of the application),
- Submits that there were a number of landslides on the face of the plot where the road is proposed,
- Disputes that there is a ROW in favour of the applicant,
- Raises concerns for water supply risks.

#### **FAC 037/2022 –**

This appeal lists the main grounds in handwriting as

- Application is not legally valid,
- That conditions do not provide clarity for residents,
- Submits that there is not a right of way from Rock Road,
- Raises issues with the Inspectors Certification,
- Raises issues with EIA Screening and Appropriate Assessment.

This appeal also includes broadly the same grounds as is set out in typed format in FAC 033/2022.

#### **DAFM Statement (SOF) to the FAC**

The DAFM provided a statement (SOF) to the FAC in relation to each of the appeals (FAC 033 – 037/2022) and each SOF was provided to the parties concerned. These statements provided an overview of the processing of the application and the steps and dates involved. In relation to Appropriate Assessment Screening the SOF content states that ‘*Natura site 1, 2, 3,4,5,6,7, Screen out: No likelihood of a significant effect on any European site, and appropriate assessment not required*’. In relation to Ecology the SOF states ‘*Appropriate Assessment Report 24/11/2021 by Niall Phelan on behalf of DAFM Appropriate Assessment Determination 24/01/2022 by Niall Phelan on behalf of DAFM*’. The SOF content states that the proposal was Desk and field assessed with the site visit occurring on 25/08/2021. It also sets out that seven submissions were received variously on 06/08/2021, 19/08/2021, 20/08/2021, 22/08/2021 27/08/2021, 16/09/2021, and 17/09/2021. The SOF content sets out that the application was referred to the National Parks & Wildlife Service (NPWS) on 16/08/2021 and that a reply was received on 24/09/2021. Similarly, the SOFs set out that the application was referred to the Leitrim County Council on 16/08/2021 and that a reply is date stamped 14/09/2021. A truncated version of conditions attached to the approval decision are also set out in the SOF content.

The SOF addresses the grounds of appeal in relation to FAC 033, 034, 035 & 037/2022 in the five-point submission as below,

1. *'Site was field inspected in the 25th of August 2021. The information provided was deemed appropriate and sufficient to facilitate the DAFMs assessment of the proposal. Proposed NHAs are not specified as being required to be shown on bio maps and this is not stated in the Forestry Regulations 2017 Part 4, 6 (2). The pHNA was noted during desk assessment and the file was referred to the NPWS for comment as well as being referred to the DAFM ecology team. The proposed road line does not cross any area of "Dry Heath", no dry heath was observed on inspection and it is not clear what the appellant is basing this claim on. The proposed road crosses wet grassland before entering and terminating entirely within a conifer plantation.*

*The site notice location is clearly marked as being on the public road. This location was confirmed on inspection. The road described by the appellant is entirely outside the licence area.*

2. *Submission on the right of way were noted with further information requests sent to clarify the issues raised. The appellant notes that further information request have been sent within their grounds of appeal. The FIR was responded to by the applicant in the form of folio maps and a written declaration that the applicant had "a registered all purpose ROW being in place enabling access to the Coillte property".*

*DAFM contend that the licencing conditions as presented are clear well-reasoned and follow standard operating procedures.*

3. *At the time of certification an error occurred when generating forest cover figures this error resulted in an over estimate of forest cover. As this forest road project does not change forest cover in a meaningful way this minor error does not change the EIA screening decision.*

*There is clear evidence of how the local resident concerns have been considered and addressed in the form of formal clarifications of the right of way concerns raised.*

*Further concerns raised have been assessed and dealt with by referring the file to Leitrim County council who had no objection, the NPWS also had no objection. The file was referred to DAFMs ecology team, requirements to consult with local residents regarding operation timings and noise have been built into the conditions.*

*The EIA question regarding water quality was answered after the file had been required back from ecology and had AAD mitigations in place.*

*The proposed forest road follows site contours and is almost exclusively contained within a forest block this road is highly screened.*

*It wholly rejected that the outcome of the EIA is “pre-determined by the inspector” this comment is made entirely without any basis and is untrue.*

- 4. To explain this further a field inspection was carried out on the 25th of August 2021, Iforis has a legacy limit of 12 weeks for entering inspection dates this is an IT system time limit and has no effect on how information is assessed.*

*Previous screens have no bearing on final certification of licence applications.*

- 5. AA mater will be dealt with by the ecology team.’*

The SOF addresses the grounds of appeal in relation to FAC 036/2022 in a three-point submission as below,

- 1. ‘Regarding landslides it is noted that a portion of the proposed road has been highlighted as a being at a higher risk of lands slides as per susceptibility mapping by the National Geological Survey.*
- 2. The applicants right of way was demonstrated before a decision was made.*
- 3. DAFM do not accept that water supplies would be jeopardised.’*

### **Post Appeal Correspondence**

There have been a number of post appeal submissions including from Appellants, the Applicant and the DAFM. These submissions have been circulated to the parties concerned with the exception of a submission from DAFM dated 07/07/2023 which indicated that the DAFM had no further comments. The FAC has considered these post appeal submissions in its consideration of the five appeals addressed herein.

### **Considerations of the Forestry Appeals Committee**

The FAC in the first instance considered whether an oral hearing was required in the case of these appeals and having regard to the particular circumstances of the five appeals the FAC concluded that it was not necessary to conduct an oral hearing in order to properly and fairly determine these five appeals.

The FAC considered the grounds in the appeal relating to Appropriate Assessment (AA) and related matters. The FAC finds that an AA Screening on file as carried out by a District Inspector (DI) does not record the date of completion by the DI, while displaying a date of 22/03/2022, which is after the AA report had been prepared. The said AA Screening records that seven sites within 15 km of the proposal were considered and all of these were screened out. The reason recorded for screening out all seven sites is given as “Other factors, AS per AAD”. The overall conclusion of this screening is that there is no likelihood of a significant effect on any European site, and that Appropriate Assessment is not required. The record also shows that there is an AA report (AAR) dated 24/11/2021 completed by Niall Phelan,

Environmental Facilitation Ltd on behalf of the MAFM. It states that having carried out an AA screening, it has been determined, on the basis of objective scientific information, that the project, individually or in combination with other plans and projects, is likely to have a significant effect on Lough Gill SAC 001976 and that an Appropriate Assessment must be carried out in respect of the project. The AAR describes the project as a 920m proposed forest road planned to facilitate thinning operations for a forest of approximately 9.52 hectares while the In-Combination report as included at section 6 of the AAR describes the project as being 960 metres and being of medium scale. The FAC finds no AA screening document on file relating to the project other than that carried out by a District Inspector and as referenced above. The said AA screening screened out all sites and concluded that there is no likelihood of a significant effect on any European site, and that Appropriate Assessment is not required. The only date provided on the document postdates the AAR. It is a requirement under the Forestry Regulations 2017 for the Minister to complete a screening for Appropriate Assessment in relation to the application that was made. The FAC considers that the absence of an AA Screening which concurs with the screening conclusion described in the introduction in the AAR represents a serious error in the processing of the application in so far as AA is concerned.

This AAR bearing the date 24/11/2021 also includes the following text at section 6 where it deals with an In-Combination Assessment of the project,

*'The proposed forest scheme project CN89294 lies in a rural landscape in the townland(s) of Tawnymanus, Larkfield, Leitrim. It is within the River Sub-Basin Bonet\_040, approximately 18% of which is under forest cover, which is greater than the national average of 11%. At 960 metres, the proposed project is considered medium in scale. The review of the DAFM Forestry Licence Viewer identified a number of forestry projects within the vicinity. These projects undergo environmental assessment, including AA screening and appropriate assessment (if necessary).*

*In the River Sub-Basin Bonet\_040 over the last 5 years a number of developments have been or were in the process of being granted planning permission. These too undergo environmental assessment, including AA screening and appropriate assessment, if necessary.*

*It is concluded that there is no possibility that the proposed forest scheme project CN89294, with mitigation measures set out in Section 4, will itself, i.e. individually, giving rise to an adverse effect on the integrity of the following European Sites and their associated Qualifying Interests / Special Conservation Interests and Conservation Objectives: Lough Gill SAC. Therefore, there is no potential for the proposed project to contribute to any cumulative adverse effect on the integrity of the above European Site(s), when considered in-combination with other plans and projects.*

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



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

*Note that this relates to the proposed activities under CN89294 only. Any subsequent forestry-related activity shall be subject to the DAFM Appropriate Assessment Procedure, including an in-combination assessment, prior to any future consent being granted.*

*In-Combination Statement completed on the: 24/11/2021'.*

The FAC would understand that the consideration of other plans and projects should take place as part of the process to ascertain whether the project, either individually or in-combination with other plans or projects, is likely to have a significant effect on a European site. The FAC considers the conclusion stated above to be an error as it suggests that the decision maker has not considered effects that might arise from the proposal which themselves may not be significant but which in-combination with other plans and projects could result in a significant effect on a European site. The FAC would consider that the In-Combination test as applied in this case is not in keeping with the requirements of the Forestry Regulations 2017 and Article 6(3) of the EU Habitats Directive and represents a further serious error in the processing of the application in so far as Appropriate Assessment is concerned. The FAC also noted that the Appropriate Assessment documentation on file referred variously to the project being for 960m of forest road and 920m of forest road. In so far as this licence is being set aside and remitted for errors identified elsewhere in this letter the matter of quoting the correct length of the proposed roadway in file documentation should be resolved by the DAFM before a new decision is made on the application.

The FAC considered the grounds in the appeal in relation to EIA screening and related matters and in this context noted the submission by the DAFM in the SOFs relating to EIA assessment for FAC 033, 034, 035 and 037/2022, wherein it states that at the time of certification an error occurred when generating forest cover figures and that this error resulted in an overestimate of forest cover. It also states that this forest road project does not change forest cover in a meaningful way and that this minor error does not change the EIA screening decision. The SOF content also submits that there is clear evidence of how the local residents concerns have been considered and addressed in the form of formal clarifications of the right of way concerns raised and that further concerns raised have been assessed and dealt with by referring the file to Leitrim County council who it states had no objection while also referencing that the NPWS had no objection. It also states that the file was referred to DAFMs ecology team and that requirements to consult with local residents regarding operation timings and noise have been built into the conditions. The SOF content states that the EIA question regarding water quality was answered after the file had been back from ecology and had AAD mitigations in place. The SOF content further states that the proposed forest road follows site contours and is almost exclusively contained within a forest block while stating that this road is highly screened.

The FAC noted the content of the Assessment to Determine EIA Requirement as completed by the DAFM and as based on a Last Spatial Run Date of 11/03/2022 in advance of making the decision to grant the licence subject of this appeal. In this assessment a consideration of the application across a range of

criteria relevant to the proposed forest road, including water, soil, terrain, slope, archaeology, designated areas, landscape and visual amenity and cumulative effects is recorded, and it is determined that the project was not required to undergo EIA. The FAC noted that the procedure as recorded provides for further commentary to be recorded and that the following commentary was included '*Right of way and noise concerns raised by local residents.*' The FAC noted that the cumulative impact assessment in the EIA screening refers only to other forestry projects and, although there is an In-Combination statement on file for the AA screening process, there is no evidence that other, non-forestry projects were considered when assessing the cumulative impact of the proposal on the environment. The FAC considers this to be an error in the EIA screening in this case.

The FAC considered the grounds of appeal in relation to the apparent differences in forest cover as recorded in the Assessment to Determine EIA Requirement form and the In-Combination Assessment documentation on file. (70% vs 18% when referring to what appears to be broadly the same area). The FAC finds that in the course of this Assessment to Determine EIA Requirement that the DAFM recorded that the current forest cover in the underlying waterbody was 70.08% and that this is at variance with the comparable figures as quoted in the In-Combination assessment report dated 10/03/2022 wherein it is recorded that the forest cover in the underlying waterbody (waterbodies) is approximately 18%. The FAC concluded that in proceeding to make a determination regarding the Requirement for an EIA in the absence of a documented reconciliation of the apparent differences in these forest cover percentages the DAFM made a further error in the processing of the application in this case as it related to the EIA Directive.

The FAC considered the grounds of appeal relating to water quality and concerns that water supply to houses and farms would be jeopardised. The FAC finds that the DAFM in its AAR at section 3 records an overview of the project is as follows: '*This 920m proposed forest road is planned to facilitate thinning operations for a forest of approximately 9.52 hectares. The road is proposed to be built by excavation (see Appendices: Figure 1 for road specification). The project area (PA) is situated on a very steep (>30%) slope and is comprised of 84% surface/groundwater gleys (shallow) and 16% surface/groundwater gley soils. The project is traversed by a RWC (see Appendices: Figure 2 and Figure 3) which travels ~900m before discharging into the Larkfield aquatic zone, therefore providing a hydrological connection with Lough Gill SAC (~2km downstream) via the BONET\_040 sub basin 1 (WFD Status: Not at risk, Ecological Status: Good). Otter is a qualifying interest of this SAC, records were noted ~5km downstream from the project area (see Appendices: Figure 4). Records of White clawed crayfish were also noted ~ 11.2km downstream. Lough Gill SAC (see Appendices: Figure 5).*' In this context, and notwithstanding the apparent error in recording the length of the proposed road, the FAC notes that the status of the waterbody concerned is recorded by the DAFM and that this is the context against which the application is assessed. It is further noted that the topography of the proposal area is recorded which informed the DAFM in its assessments. The FAC also noted that the considerations made by DAFM in its assessment to determine EIA requirement, including in relation to water matters, were clearly articulated in the screening form and were based on a spatial run that postdated the completion of the AAR. The FAC also noted that the site was field inspected on 25<sup>th</sup> August 2021 which would have afforded the DAFM an opportunity to field-assess any risks arising including in relation to water quality.

The FAC finds that having consulted the Catchments.ie website on the day of the hearing of this appeal that the status of the Bonet\_040 waterbody is recorded as Good, and that the status is based on monitoring. The FAC also finds that the Catchments.ie website on the same day recorded that the said waterbody is not at risk for the 2016 - 2021 cycle. The FAC notes that the licence as issued contained a number of conditions in relation to the protection of water quality. The proposal is for the construction of 960m of forest road. 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. Having regard to all the circumstances in this case, including the nature and scale of the project, the FAC considered that the DAFM has not erred in the making of the decision in this case, as it relates to the protection of water quality, the requirements of the Water Framework Directive and related matters and as included in the grounds of appeal.

The FAC considered the grounds of appeal contending that there are deficiencies in the BioMaps submitted with the application in particular relating to an area of European Annex I Habitat and that the proposal runs through an area of pNHA not shown. The FAC finds that the requirements for the mapping to be submitted with an application for a licence to construct a forest road is as set out in section 6 (2) of the Forestry Regulations 2017 wherein it sets out,

*'(2) An application for a licence in respect of forest road works shall contain—*

*(a) an Ordnance Survey map or other map acceptable to the Minister, with the boundary of the land to which the application relates delineated and the route of the proposed road clearly marked and shall clearly show the following details—*

*(i) public roads,*

*(ii) forest roads,*

*(iii) aquatic zones,*

*(iv) wayleaves,*

*(v) archaeological sites or features,*

*(vi) hedgerows, and*

*(vii) any other features which may be relevant to the application,'*

The FAC noted the submission from the DAFM in its statements to the FAC wherein it states that the information provided was deemed appropriate and sufficient to facilitate the DAFM's assessment of the proposal and that proposed NHAs are not specified as being required to be shown on bio maps and that

this is not stated in the Forestry Regulations 2017 Part 4, 6 (2). The application identified that the road was within a pNHA. The SOF content sets out that the pNHA was noted during desk assessment and the file was referred to the NPWS for comment as well as being referred to the DAFM ecology team, further it states that the proposed road line does not cross any area of "Dry Heath", that no dry heath was observed on inspection, and that it is not clear what the appellant is basing this claim on. It sets out that the proposed road crosses wet grassland before entering and terminating entirely within a conifer plantation. The area identified by the Appellants is not traversed by the proposed road.

The FAC finds that the DAFM did refer the application to the NPWS and that a response was received on 24/09/2021 in which the NPWS stated that it had no comment to make on the application. The FAC also finds that in a document on the FLV titled 'Other' and shown as loaded to the FLV on 08/10/2021 which appears to be details for the project CN89294 as submitted by the applicant states that:

*'The proposed road runs within the 50m buffer zone of an aquatic zone and, additional silt control measures will be required. An updated forest road drainage design must be undertaken at the time of construction to take account of local site conditions, slope, ground conditions and existing drainage patterns. These must be confirmed at the time of construction to take account of localised variations on the site. The aim of the new drainage design will be to outfall the water away from an aquatic zone, this may include the creation of silt holding ponds or the use of longitude silt curtains. The aim if these measures is to ensure no direct connection from the project area to an aquatic zone.'*

The aquatic zone referenced as being within 50 metres of the proposed roadway does not appear to be marked on the maps submitted with the application nor has the FAC established that such an aquatic zone is visible on EPA mapping of such features. DAFM standards require the avoidance of road works within 50 metres of an aquatic zone where possible. In so far as this licence is being set aside and remitted for errors identified elsewhere in this letter the matter of the location of any aquatic zones in the project area or within 50m of same should be clarified by the DAFM before a new decision is made on the application.

The FAC finds that the licence decision under appeal pertains to the construction of a forest road of 960 metres in length in the townlands of Larkfield and Tawnymanus, Co. Leitrim. The FAC also finds that there is an incidence on the file of where the project is referenced as being at Larfield (only) and that the licence as issued (and subject of these appeals) is for a project at Larkfield. The FAC considered that this represents an error in the processing of the application by the DAFM. In so far as this licence is being set aside and remitted for errors identified elsewhere in this letter the matter of the quoting the correct townlands in which the proposal is located should be resolved by the DAFM before a new decision is made on the application.

The FAC considered the grounds in the appeals in relation to matters relating to rights of way and the submission in the case of FAC 035/2022 wherein it contends that the ROW (in favour of the applicant) is broken at folio 15578 which the appellant in appeal FAC 035/2022 states she is owner of. The FAC notes that the applicant has submitted documentation to DAFM with a view to demonstrating that a right of way exists to facilitate the proposed roadway. The FAC further notes that this is disputed by the

appellants. The FAC considered that any issues in relation to rights of way / land ownership are matters to be resolved as a civil matter and are not matters for the FAC to determine.

In considering these five appeals, the FAC had regard to the record of the decision, the submitted grounds of appeal, submissions made (including post appeal documentation), and the SOFs submitted by the DAFM. The FAC is satisfied that a series of significant or serious errors was made in the making of the decision CN89294. The FAC is, thus, setting aside and remitting the decision of the Minister regarding licence CN89294 in accordance with Section 14B of the Agriculture Appeals Act 2001, as amended, to undertake a new screening for EIA in line with the requirements of the Forestry Regulations 2017 and the EU EIA Directive and to carry out a new Appropriate Assessment 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. The DAFM should also ensure that other errors identified in this letter such as the quoting of the full and correct location of the project and its length should be resolved before a new decision is made on the application.

Yours sincerely,

\_\_\_\_\_  
Seamus Neely, On Behalf of ~~the~~ Forestry Appeals Committee

