



4<sup>th</sup> October 2023.

**Subject:** Appeal FAC 001/2023 regarding CN90735

Dear

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 (DAFM). The FAC established in accordance with Section 14A(1) of the Agriculture Appeals Act 2001 (as amended) has now completed an examination of the facts and evidence provided by the parties to the appeal.

**DECISION.**

Having regard to the evidence before it, including the DAFM record of the decision, the Statements of Fact (SoF) provided by the DAFM, all materials on file, the notice and grounds of appeal and post-appeal submissions and in particular the following considerations, the FAC has decided to set aside and remit the decision of the Minister regarding licence CN90735.

**THE LICENCE.**

Licence CN90735 is a single consent application for 6.24 Ha of GPC 3 afforestation in 3 Plots located in the townland of Kilmoon West, Co. Clare.

The application for the licence was submitted to the DAFM on the 24<sup>th</sup> of April 2022. A decision approving the licence was issued on the 23<sup>rd</sup> of December 2022 with conditions, including compliance with DAFM Technical Standards, retention of all existing hedgerows & trees on the site, a concentration of additional broadleaved trees along the South-western boundary of the site, and compliance with the conditions contained in the archaeology report on the licence application.

**FORESTRY APPEALS COMMITTEE.**

A hearing was held remotely at a sitting of the FAC held on the 21<sup>st</sup> of September 2023 which considered the appeal and the processing of the licence as it relates to the decision to issue the licence on the 23<sup>rd</sup> of December 2022.

The FAC members present were: Mr. Seamus Neely (Chairperson), Mr. Vincent Upton and Mr. Iain Douglas.

Secretary to the FAC: Ms. Vanessa Healy.

**BACKGROUND.**

The proposal consists of the afforestation of 6.24 Ha in 3 plots. Plots 1&2 are GPC 3 (Sitka spruce and Birch), Plot 3 is a bio-plot. The Plot numbering is that used on the DAFM Site Plots Pre-Approval report dated 23<sup>rd</sup> of December 2022 and the licence as issued.

The site is located some 1.7 Km. north of the town of Lisdoonvarna and can be described as primarily rectangular in shape, with the proposed afforestation infilling between two blocks of existing forestry. The site description given is that the site soils are Surface water Gleys/Ground water Gleys and Blanket Peats. The average slope across the site is moderate (4%) and ranges from 0% to 10%. The vegetation on the site is described as wet grassland. The site is not crossed by or adjoins an aquatic zone but there are relevant watercourses on site.

The application documents before the FAC included a Location map, Bio Diversity/Operational Map a Fencing map and an Inet Pre-approval submission report all uploaded to the Forestry Licence Viewer (FLV) on the 23<sup>rd</sup> of April 2022. A site notice and photograph of the site notice in situ were uploaded to the FLV on the 27<sup>th</sup> of April 2022 (the site notice is dated 22<sup>nd</sup> April 2022).

The DAFM referred the licence to Clare County Council on the 3<sup>rd</sup> of May 2022 and An Taisce on the 25<sup>th</sup> of October 2022. Clare County Council replied on the 30<sup>th</sup> of May 2022 stating that it was not supportive of afforestation at the proposed site because of concerns regarding the nature of the soils giving rise to the possibility of sedimentation and nutrient enrichment on nearby river waterbodies and the consequent risk to their achieving Good Status under the Water Framework Directive (WFD) and the fact that forestry is identified as a pressure on the waterbodies. An Taisce replied on the 25<sup>th</sup> of November 2022 expressing concerns that the project should not proceed without a rigorous sub-threshold EIA screening, that standard forestry guidelines have failed to protect water quality in the area, given that forestry is the main pressure, and additional mitigation measures are required to protect water quality, in line with the WFD obligations and that there was no archaeological setback specified on the Bio-map or Bio Table for the ruin within Plot 1 and the Ring Fort to Plot 3.

On the DAFM file there is an Inspector's Certification Report; an Inspector's Assessment to Determine Environmental Impact Assessment (EIA) certified on 22/12/2022 and dated 23/12/2022, an In-Combination Statement completed on 26/07/2022, a Site Details Report and Site Plots Report both dated 23/12/2022, a DAFM Archaeologist's Report dated 5<sup>th</sup> of July 2022 and a DAFM Ecologist's Appropriate Assessment Screening Report & Determination(ASSRD) dated 12/10/2022 which includes, an Appendix A an In-Combination Statement completed on 25/08/2022

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

An Appropriate Assessment Screening Report & Determination(ASSRD) examined the 10 Natura 2000 sites located within 15 Km. of the site; Ballyteige (Clare) SAC (Site Code 0000994, Black Head-Poulsallagh Complex SAC (Site Code 0000020), Moneen Mountain SAC (Site Code 0000054), Cliffs of Moher SPA (Site Code 0004005), Ballyvaughan Turlough SAC (Site Code 0000996), Inagh River Estuary SAC (Site Code 0000036), Galway Bay Complex SAC (Site Code 0000268), Inner Galway Bay SPA (Site Code 0004031), East Burren Complex SAC (Site Code 0001926), Inisheer Island SAC (Site Code 0001275). All sites were screened out of the need for Appropriate Assessment (Stage 2) for a number of reasons including, that there was no hydrological connection or other sufficient pathways for impact, that the site is beyond the foraging distance for Lesser Horseshoe bat. No marsh fritillary was found during survey carried out 13/09/2022 and that there is no hydrological connection (either surface or groundwater) or other sufficient pathways for impact to the Natura 200 site, the site is located in a different ground waterbody and there is no hydrological connection or other sufficient pathway for impact to the particular Natura 2000 site, that the project is beyond the likely foraging range of all the SPA's SCI species, that the site is separated from the particular SAC such that there is no likely significant impact on any SAC listed species or habitats, that the site is located in a different water catchment to the Natura 2000 site.

The DAFM archaeologist's report contained a number of conditions including, that the Recorded Monument contiguous to Plot 3 (Bio) and Plot 1 should be entirely excluded from the proposed afforestation works and the inclusion of unplanted archaeological/architectural buffer zones/setbacks to the historic features throughout the Plots.

The Inspector's Certification Report recommends approval of the licence subject to three conditions: (1). the retention of all existing trees and hedgerows within the site, (2). The carrying out and completion of the proposed afforestation in compliance with the Environmental Requirements for Afforestation and the Forestry Standards Manual (as amended by periodic Circulars), (3). This is a repetition of condition 2.

The licence as issued included additional conditions:

(a) *"concentrate the planting of additional broadleaves along the South Western Boundary of the site. Reason: In the interest of the protection of waterways present."*

(b) *"The following specific archaeological and vernacular architectural heritage protection requirements shall be fully complied with, a) A minimum 20m wide archaeological exclusion zone/setback shall be established from the outermost extent of the Ringfort (CL008-044) contiguous to Plot 3, as demarcated in red and yellow hatching on the accompanying map, which should be excluded from the proposed development; b) No drains should be opened within 30m of the Recorded Monument either (i.e., within 10m of the archaeological exclusion zone); c) Fencing required around the archaeological exclusion zone/ setback and pedestrian access should be respected or established; d) In addition, a minimum 10m wide unplanted buffer zone/ setback shall be established from the historic 19th/20th century structure in the central portion of Plot 1, as demarcated in orange on the accompanying map; e) A minimum 5m wide unplanted buffer zone/ setback shall be established from the historic townland boundary on the southwestern boundary of Plot 1, as demarcated in orange on the accompanying map; f) A minimum 5m wide unplanted buffer zone/ setback shall be established from the historic footpath/ laneway in the southeastern portion of Plot 1, 2 and 3, as demarcated in orange on the accompanying map; and g) See attached archaeological report and accompanying illustrative map for further details. Reason: In order to safeguard the archaeological monument contiguous to the site and the vernacular architectural heritage on site; and to ensure the identification, recording, further preservation and protection as appropriate, of any other archaeological remains (including low visibility or subsurface remains) that may exist within the site."*

The licence was subject of both a Desk Assessment and a Field Inspection. The Field Inspection took place on the 6<sup>th</sup> of July 2022 and also inspected by the Ecology and Archaeology sections of the DAFM.

There were two third-party submissions on the licence application.

#### **THE APPEAL.**

There is one third-party appeal against the decision to approve this licence application. The grounds of appeal are summarised as follows:

- The timing of the decision and the availability of documents.
- The planting of monoculture forestry on Upland blanket bog.
- Mono-culture forestry of non-native species is not the way to mitigate the effects of climate change.
- There are references to protected habitats and species, in particular, Molinia Meadows, Pygmy Shrew, Hen Harrier, Marsh Fritillary butterfly and species of lichen.

- An EIA is requested in view of the cumulative impact of monoculture plantations in north County Clare.
- The effect of monoculture causing isolation of communities.
- The risk of wildfires.
- The dominance of mono-culture plantations.
- The impact of forestry on cycling & tourism.
- Native woodland is the preferred planting regime.
- The impact of forestry on water quality by the use of Herbicides/Pesticides generally and the Aille Catchment in particular.
- The Rights of Nature.
- Drainage of peatlands, monoculture planting on non-native species and consequent clear-felling could be classified as Ecocide.
- The applicant has not consulted with neighbours as per Forestry Standards Manual.
- An oral hearing was requested.

#### **Post-Appeal Submissions.**

There were post-appeal submissions by both the appellant and DAFM. The grounds of appeal and relevant post-appeal submissions and responses were circulated to both parties with the exception of the appellant's submission of 14<sup>th</sup> September 2023 which the FAC considered was an elaboration of matters raised in the appeal proper, and subsequent submissions by the appellant and the DAFM and did not raise any new issue(s) that the FAC required the DAFM to address.

#### **CONSIDERATION BY THE FAC.**

At its sitting on the 21<sup>st</sup> of September 2023, the FAC had before it the full DAFM record of the decision as made available on the FLV, the notice, the grounds of appeal, the post-appeal submissions, the SoFs provided by the DAFM and all materials on file. The FAC noted the request by the appellant for an oral hearing. Having reviewed all the documentation and submissions, including those of the appellant, the FAC considered that there was sufficient information available to it to enable it to assess and determine the appeal without recourse to an oral hearing.

The grounds of appeal make frequent reference to licence CN85525 (FAC 061/2022). In the interest of clarity and for the avoidance of doubt this sitting of the FAC considered only appeal ref: FAC 001/2023 in relation to the licence decision of 23<sup>rd</sup> of December 2022. Only those documents relevant to the appeal under consideration are referred to below.

#### ***DAFM STATEMENT OF FACT.***

The SoF provided by the DAFM for the appeal, dated the 18<sup>th</sup> of July 2023 confirms the administrative details of the licence application, and indicates that the licence application was desk assessed only. The SoF states that the DAFM was satisfied that all criteria in its standards and procedures were adhered to in making the decision on the licence application.

There is also a statement from the District Forestry Inspector (DI) dated the 26<sup>th</sup> of January 2023 confirming that the AA process was carried out using the procedures of November 2019, that the standard operating procedures were applied, and containing response to a number of the grounds of appeal from a Silvicultural/Environmental "triage perspective".

#### ***GROUNDINGS OF APPEAL.***

The FAC considered that the appellant's grounds of appeal and post-appeal submissions under the headings, Administration, Environmental Impact Assessment, Appropriate Assessment, Archaeology and Policy.

## **Administration.**

### ***The timing of the decision.***

The grounds of appeal submit that the 14-day appeal period specified under the Forestry Act and Regulations should be adjusted to take account of the Christmas period. The FAC noted that the decision on the licence was made on the 23<sup>rd</sup> of December 2022 and notified to the public on the same day. The appeal was received by the FAC on the 5<sup>th</sup> of January 2023 and was within the 14-day period specified in law. The FAC is satisfied that the DAFM has complied with its obligations under the Forestry Act and Regulations with respect to notification of the public of its decision. The Appeal period is provided in law and the FAC has no discretion in accepting out of time appeals. In this case an appeal was made and the responding submission on behalf of the Minister was provided to all parties along with a right to reply.

### ***The Forest Licence Viewer (FLV).***

This ground of appeal contends that the consultation process for this appeal has been made difficult by the unavailability of the application documentation on the FLV on a specific date and that licence numbers for specific planted areas are not shown on the FLV. The role of the FAC is to consider whether the DAFM made a serious or significant error, or a series of errors in making the decision under appeal, and whether that decision was made in compliance with fair procedures. The issues raised in this ground of appeal refer to matters that are post-decision and are a matter for the DAFM and therefore do not fall within the remit of the FAC.

### ***Consultation with prescribed bodies.***

The grounds of appeal refer to Clare County Council not being supportive of the proposal and the fact that the proposal was not referred to the National Parks & Wildlife Service. The FAC noted that the DAFM is the competent authority for issuing forestry licences and that referrals to local authorities and other bodies is a matter for the DAFM and that in its SoF the DAFM addresses the response of Clare County Council and gives the reasons why it was deemed unnecessary to refer the licence to the NPWS. The FAC is not satisfied that the DAFM has erred regarding these grounds of appeal.

### ***The applicant has not consulted with neighbours as per Forestry Standards Manual.***

This ground of appeal contends that the applicant did not consult with neighbours directly affected by the proposal as required by the Forestry Standards Manual. The FAC noted Section 19.4 - Public consultation process - of the Forestry Standards Manual 2015 and Table 19.2 in particular wherein it is stated that where "Areas of all sizes within 60 m of a dwelling or associated building" the "Applicant should liaise with the owners of neighbouring properties to resolve in advance any potential concerns." The FAC noted that, having consulted publicly available aerial photography, there are no dwellings within 60m of the site boundaries of the proposed afforestation. A site notice was erected as required under the Forestry Regulations 2017 and the public were provided with an opportunity to make observations on the application. The FAC is not satisfied that the DAFM has erred regarding these grounds of appeal.

### ***Failure to comply with Afforestation Licence.***

The appellant contends that there has been a failure to comply with the future Condition 5(d) of the licence in that the 19<sup>th</sup>/20<sup>th</sup> century structure mentioned in the archaeology report has been demolished and removed from the site. The FAC noted the response of the DAFM archaeologist to this matter dated 11<sup>th</sup> of August 2023 that as no licence has issued the demolition of the structure is a matter for the Planning Authority not the DAFM and that the condition for a 10m unplanted buffer zone around the structure or the foundations of the structure remains in place. The enforcement of licence conditions is not within the remit of the FAC.

### **Environmental Impact Assessment (EIA).**

This ground of appeal contends that an EIA is required because of the cumulative impact of forestry in the north of County Clare. The FAC noted that the EU EIA Directive sets out, in Annex I a list of projects for which EIA is mandatory. Annex II contains a list of projects for which member states must determine, through thresholds or on a case-by-case basis (or both), whether or not EIA is required. Neither afforestation nor deforestation is referred to in Annex I. Annex II contains a class of project specified as "initial afforestation and deforestation for the purpose of conversion to another type of land use" (Class 1 (d) of Annex II). The Irish Regulations, in relation to forestry licence applications, require the compliance with the EIA process for applications relating to afforestation involving an area of more than 50 hectares or any afforestation below the specified parameters where the Minister considers such development would be likely to have significant effects on the environment. The decision under appeal relates to a licence for afforestation of 6.24 Ha so is sub threshold for mandatory EIA as set in Irish Regulations.

The FAC noted an Assessment to Determine EIA requirement was carried out by the DAFM and that cumulative effects are addressed in the section "*Cumulative effect and extent of project.*" Cumulative effect is assessed using a number of different parameters, the conclusion is that, based on the extent of forestry according to the parameters examined, the cumulative effect of the proposed afforestation would not be likely to have a significant impact.

In relation to the contention that licence numbers for specific planted areas are not shown on the FLV, the FAC noted the submission from the DAFM dated the 25<sup>th</sup> of August 2023 which indicates that only licence applications received after 11/01/2021 and those applications prior to that date "where ecology has been screened-in" are made available to the public through the FLV, furthermore, that the DAFM uses the IFORIS Forest Service Computer System when making a decision on a licence, not the FLV and that the FLV is simply a tool to allow the public to view the licence documentation and DAFM decisions.

In reviewing the "Assessment to Determine EIA Requirement" the FAC noted that questions that relate to cumulative effect only refer to forestry projects and do not consider other types of projects. The FAC noted that while the Minister recorded a separate characterisation of plans and projects in the area in the In-combination Report carried out as part of the AA process and completed on 25/08/2022 that this is not explicitly cross-referenced in the EIA Determination. While the FAC would consider it reasonable that the record as a whole should be considered and that the reasons for considering that the proposal is not likely to have a significant impact on the environment might be found in separate documents. Based on the foregoing, it is not apparent if adequate consideration was given to cumulative effects (including non-forestry projects) when making the determination for EIA requirement. The FAC understands that the cumulation with other plans and projects should be considered in both the characterisation of the projects and the consideration of any likely significant effects. The FAC considers this to be an error in the processing of the application.

The FAC, in reviewing the "Assessment to Determine EIA Requirement" further noted that in the section "Water" the response to the question "*Does the application and its associated operations threaten the achievement of good ecological status recovery objective set for the underlining waterbody or waterbodies under the WFD River Basin Management Plan?*" is "Yes" and the 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?*" is also "Yes". The Minister is required not to authorise a development that would endanger the objectives of the water framework directive (WFD). In this case the DAFM recorded a view that the application would threaten the achievement of good ecological status of underlying water bodies. The DAFM then goes on to state that adherence to water quality

guidelines will prevent any potential significant impact to aquatic zones and their Q values. As different tests are employed in the responses it is unclear whether the intention is that the conditions attached to the licence will ensure that the WFD objectives are met and there is no narrative explanation to provide sufficient reasons, while a commentary box is provided, and that this could be supplemented with additional reports if required. The second conclusion also relies on a set of guidelines which were not attached to the licence and appear to have been replaced with the Environmental Requirements for Afforestation and so cannot be relied upon.

Relatedly, the Minister attached a condition to,

*- condition: concentrate the planting of additional broadleaves along the South Western Boundary of the site.*

*Reason: In the interest of the protection of waterways present.*

The FAC does not consider that this condition is written with sufficient clarity and precision so as to be enforceable. For example, there is no objective measurement of distance or number of trees/planting rows stated in the condition. The DAFM concluded that water quality guidelines were sufficient to address impacts on aquatic zones but attached additional conditions which are stated to be for the purpose of the protection of waterways present. In the absence of a narrative explanation, the FAC considered that the reasons provided were unclear. The FAC noted the explanation provided by the DAFM and the fact that the site was inspected and so the DAFM were best placed to assess the situation on the ground, however, this was provided to the FAC in response to the appeal and does not fully address the errors in the record.

In the context of the decision under appeal and having regard to the submissions received particularly that of Clare County Council, the FAC concluded that these errors were of a serious and significant nature and that the decision should be set aside and remitted to address these matters.

### **Appropriate Assessment.**

#### ***Protected Habitats and Species***

This ground of appeal questions the DAFM contention that the predominant habitat is Wet Grassland rather than Molinia Meadows, a habitat protected under Annex I of the Habitats Directive and suggests that the site is suitable habitat for a number of species of fauna, the ground also refers to the Hen Harrier and lichen species.

The FAC notes that prior to the making of the decision this afforestation proposal was subject of an Appropriate Assessment Screening Report & Determination carried out on behalf of the DAFM by a consultant ecologist who inspected the site on 30/08/2022 and that the site was subject to a second ecological inspection to carry out a survey for the Marsh Fritillary Butterfly, a species protected Annex II of the Habitats Directive, and that no evidence of the Marsh Fritillary Butterfly was found on the site.

The FAC noted the response to the grounds of appeal dated 25/03/2023 and the further submission made by the DAFM ecology section dated 16/08/2023 with regard to the presence or otherwise of Molinia Meadows, the Marsh Fritillary Butterfly, the species of fauna and lichen cited in the grounds of appeal. Having regard to the fact that the site was inspected for the presence of the habitat and species referred to in the appeal, and the appellant having adduced no evidence as to the presence of that habitat or those species, the FAC is not satisfied that the DAFM has erred regarding these grounds of appeal.

### **Hen Harrier.**

This ground of appeal contends that Hen Harrier nest and forage on blanket bog and that the site is suitable habitat for the Hen Harrier and that the proposal will threaten the local hen Harrier population. The FAC noted the response to the grounds of appeal dated 25/03/2023 and the further submission made by the DAFM ecology section dated 16/08/2023 with regard to the presence or otherwise of the Hen Harrier. Having regard to the fact that the site is not within any Hen Harrier High Likelihood Nesting Area (HLNA) and is not within the core foraging range of 2 Km from any HLNA, and the appellant, having adduced no evidence as to the presence of Hen Harrier on or near the site, the FAC is not satisfied that the DAFM has erred regarding these grounds of appeal.

### **In-combination Statement.**

The FAC noted that the application was subject to the Appropriate Assessment process for the purposes of the Habitats and Birds Directives. An Appropriate Assessment Screening Report & Determination (ASSRD) considered a number of European sites designated under the requirements of those Directives and screened all of them out from a requirement to undergo an Appropriate Assessment. In screening out the sites, a range of reasons were provided which included reference to absence of a possibility of in-combination effects. This was based on an in-combination report which was attached to the AASRD in the form of an appendix. The In-Combination report includes an In-Combination statement which contains the following paragraph:

*It is concluded that there is no likelihood of the proposed Afforestation project CN90735 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 Sites, 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 an 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 on the basis that these were precluded by reason of the proposed panting as an individual project not having a significant effect. 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 and that it is 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.

### **Water Framework Directive (WFD).**

The grounds of appeal and appellant's post-appeal submissions contend that the proposed afforestation will have a negative effect on water quality and cause the WFD waterbodies in the Aille Catchment which the appellant states are "Poor", to fail to reach "Good" status by 2027, furthermore Clare County Council does not support the proposal due to risk to the existing poor surface water quality within the Aille Catchment. The FAC noted that the status of the two river waterbodies proximate to the proposed afforestation, Aille (Clare)\_010 Ballyneillan and Aille (Clare)\_010 Kilmoon Stream are both classified as being of "Moderate" status in the period 2016-2021. The FAC noted that the DAFM in its "Assessment to Determine EIA Requirement" indicates that adherence to the Forestry and Water Quality Guidelines, and any additional conditions attached to the licence will be sufficient to prevent any potential significant impact to aquatic zones and their "Q" value and that the condition



in the licence requiring additional broadleaved planting along the southwestern boundary is for the protection of waterways present.

The FAC also noted that in the DI's Statement of Fact dated 26/01/2023 the site, having been inspected in the field is stated to be predominantly wet mineral soil with a central section in a wide gully that has peat with a mixture of limestone at its bottom, rather than blanket bog. The SoF states that with prudent installation of setbacks from external boundaries and using the natural topography of the site, it is unlikely that surface water flow will be an issue and that the application proposed the use of inverted mounding on drier areas.

The appellant has adduced no evidence that the afforestation on this site, as licenced, will result in the WFD river waterbodies closest to the site failing to reach "Good" status by 2027. As previously noted, that the FAC considered that the DAFM had erred in the recording of its reasons and in the screening undertaken.

The FAC considers that the condition in the licence "*concentrate the planting of additional broadleaves along the South Western Boundary of the site.*" should be written in more precise terms specifying the width or number of rows of the additional broadleaves and the species to be planted, as previously noted.

#### **Archaeology.**

The appeal reference to Archaeology arose from the appellant's response to the DAFM Archaeologist's SoF of 16<sup>th</sup> of January 2023 and contends that the buffers specified for the protection of historic structures are inadequate and that the Recorded Monument Ringfort (CL008-044) needs to have a 20m exclusion zone. The FAC noted that a buffer was identified on the bio-map but no distance was specified. The FAC further noted that the licence contained a condition that "*a) A minimum 20m wide archaeological exclusion zone/setback shall be established from the outermost extent of the Ringfort (CL008-044) contiguous to Plot 3, as demarcated in red and yellow hatching on the accompanying map, which should be excluded from the proposed development;*" and that the licence contained other set-back conditions as specified in the archaeology report. The FAC noted the DAFM archaeologist's submission of the 24<sup>th</sup> of August 2023 in response to the appellant's submission regarding archaeology and that the setbacks for the historic structures and the Recorded Monument are in compliance with the Environmental Requirements for Afforestation 2016. The FAC is not satisfied that the DAFM has erred regarding this ground of appeal.

#### **Policy.**

The FAC considers that the grounds appeal and submissions by the appellant regarding planting on blanket bog, forestry on upland blanket bog, mitigating climate change, the dominance of mono-culture plantations, and the planting of native woodland, are related to national forest policy that, under law, is the responsibility of the Minister for Agriculture, Food and the Marine and that the grounds relating to the rights of nature and ecocide are matters of wider government policy. The land has been inspected by an Ecologist and a Forestry Inspector and the land is not comprised of Blanket Bog habitat. The application demonstrates that the land has been subject to management for agriculture including drainage and enclosure and the habitat type is Wet Grassland.

The FAC was established under the Agriculture Appeals Act 2001, as amended, with a function to hear and determine appeals against decisions of the Minister for Agriculture, Food, and the Marine under Section 7 of the Forestry Act 2014, (excluding grant aid), and the Forestry Regulations 2017-2020 in relation to afforestation, tree felling, forest road works and aerial fertilisation. The matters of the above grounds of appeal do not fall generally within the remit of the FAC itself to determine. The FAC

was satisfied that specific procedural requirements were not met in this case and is remitting the decision to the Minister to address these matters before a new decision is made.

The FAC considered the appellant's specific grounds of appeal that the proposal would have a negative effect on the local community, impact on tourism and increase the risk of wildfire. The FAC noted that these grounds of appeal contain no detail as to what negative impact the afforestation under appeal will have on the local community, tourism, or wildfire risk. The DAFM did record a consideration of the proposal across a number of criteria that includes both environmental and social effects. The appellant has adduced no evidence that the afforestation on this site, as licenced, will result in a serious, negative effect on the local community, impact on tourism and increase the risk of wildfire. The FAC is not satisfied that the DAFM has erred regarding these grounds of appeal.

### **Conclusion**

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal and the Statement of Fact submitted by the DAFM and all post-appeal submissions. The FAC is satisfied that a serious or significant error or series of errors was made in the making of the decision on licence CN90735 and is thus setting aside the decision of the Minister regarding licence CN90735 and remitting it for the Minister to carry out a new screening for Appropriate Assessment, and Appropriate Assessment if required, the screening should consider the potential for significant effects to arise from the afforestation application itself and in-combination with other plans and projects and to carry out a new screening for Environmental Impact Assessment before a new decision is made.

Yours sincerely,

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Iain Douglas,  
On Behalf of the Forestry Appeals Committee