



8th April 2024

Subject: Appeal FAC 051/2023 against licence decision CK10-FL0090

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

Hearing and Decision

A hearing of appeal FAC 051/2023 was held remotely by the FAC on 20th March 2024. In attendance:

FAC Members: Mr. Seamus Neely (Chairperson), Mr. Derek Daly & Mr. Luke Sweetman.
Secretary to the FAC: Ms. Vanessa Healy and Ms. Aedin Doran (Observer).

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. Having regard to the evidence before it, including the record of the decision, the notice of appeal, and submissions received, the Forestry Appeals Committee (FAC) has decided to set aside and remit the decision of the Minister for Agriculture, Food and the Marine to grant licence CK10-FL0090. The reasons for this decision are set out hereunder in this letter.

Background

The application for the licence decision under appeal relates to the granting of a felling licence at Carriganes, Co. Cork. The application as submitted is dated 24/03/2023 and included operational and environmental information, and maps outlining the licence area and operational and environmental features. The operations would involve the clearfelling in 2025 of an existing block of commercial forestry on an area of 4.21 ha comprising Sitka spruce. The felling age of the trees is described as being 36 years in 2025. The site would be replanted with approximately 71% Sitka spruce, with the remainder being Bio and open space. The licence was granted with conditions on 20/09/2023.

Appropriate Assessment Pre-Screening Report dated 23/06/2023

The FAC finds on file a document entitled Appropriate Assessment Pre-Screening Report, dated 23/06/2023, prepared on behalf of the Applicant. This report which is marked as being for Clearfell and

Reforestation project CK10-FL0090, located at Uggoon Upper, Co. Cork, describes the site, including hydrology, and operations in further detail and screens the proposal for potential significant effects on European sites. It describes the proposal site as being entirely covered in Conifer Plantation and contained within a sub compartment which is wholly comprised of Sitka spruce and planted in 1989. It states that three temporary water crossing points are required, two within the southern portion and one located in the central area of the of the Harvest Block. It states that several areas of windblow/snap (approx. 0.75 hectares) are dispersed across the block, whilst an area of open space (approx. 0.15 hectares) is located towards the west of the project site. A silt trap is said to be required adjacent to the western boundary of the project site and that the project is entirely underlain by Blanket Peats.

The report states that site access is available via the local road L-5086-0 which lies directly adjacent to the project area and travels along its eastern boundary for approximately 256 metres and also via Forest Road CK10R1011 which is located on the southern boundary of the project site. It states that any new forest road(s) to access the site will be subject to a separate Appropriate Assessment(s) and will consider this Appropriate Assessment for a felling licence application in the In-combination impact assessment. The report indicates that the project site lies within the River Sub-basin BLACKWATER (MUNSTER)_020 (IE_SW_18B020075) and that it overlaps with the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (004161) by approximately 4.19 hectares. It states that there are several relevant watercourses within/adjacent to the project site and that there is one aquatic zone within the project site namely the Aquatic zone CK10-W-0378.

The project site is said to be entirely located within the Margaritifera Munster Blackwater Catchment 2020 and Habitats suitable for FWPM Population (Red). In addition, the project site is said to be >10km upstream of several populations of FWPM (live validated 2006) along the Blackwater River. The pre-screening report sets out that there are four Natura 2000 sites within 15km of this project namely three SACs and one SPA. It states that the nearest designated European Site is the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (004161) which is entirely overlapping the project site. In addition, it states that the project site is potentially hydrologically connected to four Natura 2000 sites namely the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (004161) (overlap of 4.19 hectares), Blackwater River (Cork/Waterford) SAC (002170) (approximately 480 metres downstream), Blackwater Callows SPA (004094) (approximately 106km downstream) and the Blackwater Estuary SPA (004028) (approximately 154km downstream).

The project site is said to be located within an existing forestry block and is surrounded by forestry plantations on the western and southern boundaries. It states that the north and east of the project area borders areas of open grasslands and improved agricultural grassland are present. The wider surrounding landscape is stated to comprise of interspersed forestry plantations, recovering forestry plantations and improved agricultural grasslands. The report examines six European sites namely the Blackwater River (Cork/Waterford) SAC (002170), the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (000365), the Lower River Shannon SAC (002165), the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (004161), the Blackwater Callows SPA (004094), and the Blackwater Estuary SPA (004028). The pre-screening determines that Appropriate Assessment should be

undertaken in relation to specified interests of two European Sites, the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (004161) and the Blackwater River (Cork/Waterford) SAC (002170).

NIS (Applicants) 23/06/2023

The FAC also finds on file a Natura Impact Statement (NIS) for Clearfell and Reforestation project CK10-FL0090, located at Uggoon Upper, Co. Cork. At page 4 of the NIS in Section 1 it states that *'The purpose of this Natura Impact Statement is to provide supporting information to assist the competent authority, in this case, the Forest Service DAFM, to conduct an Article 6(3) Appropriate Assessment of a clearfell and reforestation project, located at Uggoon Upper, Co. Cork. This report forms part of the supporting documentation for a forestry licence application in conjunction with a pre-screening report'* and further states *'This NIS takes into consideration one PSR namely CK10-FL0090 located in the townland Uggoon Upper Co. Cork that occurs in River Sub-basin BLACKWATER (MUNSTER)_020 (IE_SW_18B020075)'*. The potential significant effects on screened in sites are outlined in relation to the interests identified in the pre-screening document and measures are outlined. The NIS at pages 5 and 6 provide details of its authors and their qualifications. The correct location of the project does not appear to be mentioned in either the Applicant's screening document or the NIS as submitted.

DAFM Appropriate Assessment Screening Report & Determination dated 08/09/2023 (AASRD)

An AA screening Report & Determination is to be found on file as prepared by the Forestry Inspector, Department of Agriculture, Food and the Marine dated 08/09/2023 on behalf of the Minister. The screening refers to *'Felling and Reforestation project CK10-FL0090, at Carriganes, Co. Cork'*. This AASRD states that in undertaking screening for Appropriate Assessment, the following were taken into account:

- the initial application, including all information submitted by the applicant, information available via iFORIS (including its GIS MapViewer) and input from the District Inspector (including information following field inspection);
- responses from consultation bodies and submissions from 3rd parties;
- any subsequent supporting documentation received from the applicant;
- any other plan or project that may, in combination with the plan or project under consideration, significantly affect a European Site;
- any information or advice obtained by the Minister;
- Conservation Objectives, Natura 2000 forms, site synopsis and supporting documents for each relevant European site, available from National Parks & Wildlife Service (www.npws.ie);
- available ecological and environmental information including aerial imagery, historical OS maps, DAFMs iFORIS system, QGIS and ArcGIS applications and data available at National Parks & Wildlife Service (npws.ie), EPA Maps, GeoHive, Data and maps (gsi.ie), Biodiversity Maps (biodiversityireland.ie);
- any other relevant information.

The AASRD states that combined with the project details and site characteristics as summarised, there is sufficient information within the application and available from elsewhere to form a sound judgement regarding the likelihood of the project having a significant effect on a European site. It records considerations of four European sites namely;

- Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA IE0004161,
- Blackwater River (Cork/Waterford) SAC IE0002170,
- Lower River Shannon SAC IE0002165, and
- Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC IE0000365.

The AA screening considers each site in turn and records a screening conclusion and reasons. The screening document concludes that an AA was required in relation to two European Sites, i.e. Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA IE0004161 and Blackwater River (Cork/Waterford) SAC IE0002170. This report references an 'Appendix A: In-Combination Report for Felling and Reforestation proposed under CK10-FL0090' with the commentary 'See File'.

DAFM In Combination Report 08/09/2023

There is an In-combination report for Felling and Reforestation project CK10-FL0090' dated 08/09/2023 on file and this appears to be the assessment for the screened out European sites. It includes the following statement:

"It is concluded that there is no likelihood of the proposed Felling and Reforestation project CK10-FL0090 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. Similarly, there is no likelihood of residual effect(s) that might arise, which are not significant in themselves, creating a significant effect in-combination with other plans and projects.

Therefore, 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 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 significant effects on 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 significant effect on the above European Site(s).

Note that the European Site(s) that have not been screened out by this screening exercise will be progressed to, and addressed in, Stage 2 Appropriate Assessment'.

DAFM In-Combination Report 11/09/2023

There is an In-Combination Assessment for Felling and Reforestation project CK10-FL0090' dated 11/09/2023 on file. It is titled as an 'Appropriate Assessment Report Appendix A: In-combination report for Felling and Reforestation project CK10-FL0090'. This appears to be the assessment for the screened in European sites and it includes the following statement:

'It is concluded that there is no possibility that the proposed Felling and Reforestation project CK10-FL0090, with mitigation measures set out in Section 4 of the AAD, will itself, i.e. individually, giving rise to an adverse effect on the integrity of any European Sites and their associated Qualifying Interests / Special Conservation Interests and Conservation Objectives. Similarly, there is no likelihood of any residual effect(s) that might arise, which do not in themselves have an adverse effect, creating an adverse effect in-combination with other plans and projects.

Therefore, there is no potential for the proposed project to contribute to any adverse effect on the integrity of the European Site(s) listed in the main body of this report, 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 CK10-FL0090 only. Any subsequent forestry related activity shall be subject to the DAFM Appropriate Assessment Procedure, including an incombination assessment, prior to any future consent being granted.'

DAFM Appropriate Assessment Determination dated 13/09/2023 (AAD)

A separate Appropriate Assessment Determination (AAD) for Felling and Reforestation project CK10-FL0090, at Carriganes, Co. Cork, (marked as prepared by Envirico Ltd on behalf of the Minister for Agriculture, Food and the Marine and dated 13/09/2023), records what was taken into account in undertaking the Appropriate Assessment including, the initial application, including all information submitted by the applicant, information available via iFORIS (including its GIS MapViewer) and input from the District Inspector (including information following field inspection); responses from consultation bodies and submissions from 3rd parties; any subsequent supporting documentation received from the applicant; any other plan or project that may, in combination with the plan or project under consideration, significantly affect a European Site; any information or advice obtained by the Minister; the AA Screening Report and Determination for this project, which is stated to be evidence of the required evaluation of any potential significant effects that may arise as a result of the proposed project on European Sites (at no stage during the screening process were measures intended to avoid or reduce any potential effects to European sites considered); any Natura Impact Statement provided by the applicant on foot of a request by the Minister, or otherwise, any supplementary information furnished in relation to any such

report or statement, Conservation Objectives, Natura 2000 forms, site synopsis and supporting documents for each relevant European site, available from National Parks & Wildlife Service (www.npws.ie), available ecological and environmental information including aerial imagery, historical OS maps, DAFMs iFORIS system, QGIS and ArcGIS applications and data available at National Parks & Wildlife Service (npws.ie), EPA Maps, GeoHive, Data and maps (gsi.ie), Biodiversity Maps (biodiversityireland.ie), and any other relevant information.

The AAD states that *'It was determined that adequate information was available to enable an Appropriate Assessment Determination to be reached for this project. The Minister has carried out the Appropriate Assessment of the potential impacts of the likely significant effects of Felling and Reforestation project CK10-FL0090 on those European sites 'screened in' (as listed above) and has made certain, based on best scientific knowledge in the field and the European Communities (Birds & Natural Habitats) Regulations 2011 (as amended) and the Forestry Regulations 2017, as amended, and Article 6(3) of the Habitats Directive, that the proposed project, individually or in combination with other plans or projects, will not adversely affect the integrity of any of the aforementioned European Sites, having regard to their conservation objectives, provided the following mitigation is implemented...'* The AAD report then goes on to set out the mitigation proposed.

County Council Referral

The application was referred to Cork County Council on 12/04/2023 as part of a list of projects and was described as a project at Carriganes, Co Cork. There is no record of a response on file from the Local Authority.

NPWS Referral and Response

The application was referred to the National Parks and Wildlife Service (NPWS) on 12/04/2023 who responded on 30/06/2023 and made observations under the headings;

- Blackwater SAC,
- General FPM SAC observations, and
- Stacks to Mullaghareirk Mountains SPA.

The submission inter-alia referenced that regarding the NIS and CO's it is important for the FS to note and address the fact that the proposed clearfell involves a plantation on peat soil (where a former blanket bog was planted) and that it slopes steeply down towards the SAC with numerous direct hydrological connections with the nearby SAC. It also sets out that though some relevant water courses have been identified on the Harvest Plan Map others have been omitted/not identified and gave example that each of the internal old field boundaries have extra relevant watercourses associated with them with more also on the boundaries of the site. It also pointed out that in addition a large number of drains occur within the site, all draining directly downslope towards the SAC with most containing standing or flowing water even in dry weather. It noted that a range of approximately 1-3 foot depth of sediment/peat is evident in

most of the relevant watercourses and drains and that a similar depth of deposited peat sediment is evident in hollows, old furrows or windblows scattered within the proposed area for felling.

IFI Referral and Response

The application was referred to the IFI on 12/04/2023 who responded on 24/04/2023 and set out what Inland Fisheries Ireland required, as a condition of any felling licence granted i.e. that the applicant be required to;

1. *'Avoid long extraction tracks. Machinery (such as forwarders in particular) used in the extraction process should not continuously traverse areas by the same route, otherwise deep rutting will occur which eventually will lead to the discharge of silt laden waters from and through rutted areas. Use adequate branch wood (brash matting) to reduce erosion on forwarder tracks.*
2. *To ensure that any felling machinery used is kept out of all drains/watercourses. Do not use forwarders < 10m from aquatic zones. Minimise timber extraction through aquatic zones. Suggestion: Flag the aquatic zone and maintain a 10m exclusion zone.*
3. *To ensure that felled timber is stacked to ensure damage to lands and subsequent loss of solids to waters is minimised.*
4. *To ensure all oil and fuel containers are stored safely and securely away from surface waters and that likewise, all refuelling and maintenance operations should be carried out at appropriate locations away from surface waters.*
5. *The first important step concerning watercourse crossing structures in mitigating their potentially negative impact on the aquatic environment must always be to determine if there are alternatives to the creation of a crossing point in relation to the operation. All necessary measures must be taken to ensure that all watercourse/stream/river crossing structures are so positioned and maintained so as not to interfere with the free flow of water, and the free movement of fish and aquatic life, and that no deleterious or polluting matter is discharged at or as a consequence of such crossings.*
6. *Having regard to the foregoing, ensure that ground stability is kept under constant review, and felling operations are carried out in such manner as not to result in creation of unstable ground conditions, or subsequently lead to post harvesting ground instability'.*

Appeal

One third party appeal (Peter Sweetman, PO Box 13611, Bantry Co. Cork) was made against the decision to grant the licence and was received by the FAC on 28/09/2023. The Notice of Appeal and full grounds of appeal were provided to the parties. In summary, the grounds submitted that there is still no Appropriate Assessment that complies with the finding of the CJEU Case 258/11 at 44. It submits that the purported Appropriate Assessment for this development fails to consider the replanting.

Ministers Statement (SOF)

The Minister provided a statement responding to the appeal which was provided to the parties. This statement disputes the appellant's assertion that there are lacunae in the AA Process. The Appropriate Assessment Determination, it states, is created following a detailed and thorough process that delivers

precise, complete and definitive findings and sets out the steps taken by the Department underpinning its compliance with article 6(3) of the Habitats Directive. These steps, it states, include that the application is uploaded to the Department's Forest Licence Viewer (FLV) and that members of the public have full access to the FLV and can see the geographic location of any felling licence received by the Department in relation to their own location. It also sets out that applications when received are advertised on the DAFM's website where location information at a townland level is provided to assist the public in locating any felling licence application for any given month and that forestry stakeholders and members of the public have 30 days to lodge a submission on any applications falling within a Townland of interest and that when a submission is made, the individual making the submission receives documents in relation to the forestry licence application.

It also sets out that the application itself includes an inventory of the stand to be felled, species, year planted, average tree size and yield class and that a pre-screening report, location maps of the harvest site and a shapefile with the digitised area of the project. It states that this shapefile allows spatial analysis by GIS to be carried out in relation to the harvest site and surrounding environmental layers such as SPAs, SACs, Hen Harrier designations and sub catchment boundaries and rivers. The statement sets out that once the 30 days has past the Department begins work on the licence application taking into account any submissions received and that this includes screening the application for Appropriate Assessment in accordance with Article 6(3) and (4) of the Habitats Directive 92/43/EEC. Screening it states, starts with GIS analysis and preparation of an 'In-combination Report' which looks at other developments and activities in the vicinity, including forestry operations. This screening exercise, it states, also looks at the documentation submitted by the applicant (Pre-Screening Report, 'In Combination' analysis and the NIS) and determines whether European Sites are either 'screened in' or 'screened out' based on hydrological connectivity to European Sites (SACs) and separation distances for birds (SPAs). It states that hydrological connectivity assessment takes into account all existing aquatic zones and relevant watercourses and uses the EPA GIS tool which includes catchment boundaries as well as rivers.

It states that where the site is screened in for second stage appropriate assessment a Natura Impact Statement (NIS) is submitted by the applicant or where an NIS has not been prepared the Department will prepare an Appropriate Assessment Report (AAR). It sets out that in either case the NIS or AAR is posted to the FLV and stakeholders and members of the public have a further 30 days to make submissions and that the opportunity to make submissions on these documents is also advertised on the Department's website and any submissions received are taken into account in preparing the Appropriate Assessment Determination (AAD). It states that prior to signing off on the AAD a second 'In combination' is prepared and that this demonstrates that the project in combination with other plans and projects with conditions doesn't have an adverse impact on the European sites.

The SOF outlines the 'Scientific Rational' on which conditions included in felling licences are based. It sets out that experts within the Department then develop the standard mitigations based on these documents and their own expertise. It then lists references and further reading. In relation to replanting it sets out that the application contains a detailed reforestation map along with the proposed species mix at replanting and that throughout the applicant's own Pre-Screening Report and Natura Impact Statement

(NIS) replanting is referred to. It states that the NIS for example goes into detail on how the ground will be prepared for replanting, how trees will be physically put in the ground and the treatment of plants to protect against pine weevil. Section 3 of the AAD, it states, lists the documents that were taken into account in the AA which includes the application and the NIS.

Considerations of the FAC

The FAC had regard to the documentation provided through the DAFM's FLV as notified to the parties, the notice of appeal and the statement provided by the DAFM. In relation to Appropriate Assessment the documents included a Pre-Screening Report and Natura Impact Statement submitted by the Applicant in addition to other application information, and an AASRD and AAD both prepared on behalf of the Minister. Also on file are two In-Combination Assessment documents prepared on behalf of the Minister. The In-Combination Assessment dated 08/09/2023 appears to be an appendix to the DAFM AASRD and the In-Combination Assessment dated 11/09/2023 is described as being an appendix to an Appropriate Assessment Report which does not appear to be on the FLV.

From the procedure adopted in relation to the processing of this application it appears that the NIS was prepared before the screening was undertaken by the Minister. Having regard to the Forestry Regulations 2017, the FAC considers that this may be acceptable in practice where there is a clear consistency in the reasoning in the assessment undertaken by the Minister with that in the NIS or that any significant inconsistencies are explained and where the assessment and conclusions are clear, definitive and complete. In this instance, the FAC is of the view that there is contradictory information within the pre-screening and NIS submitted by the applicant and the screening and assessment undertaken by the Minister. The Pre-Screening submitted by the applicant is described as being for a Clearfell and Reforestation project CK10-FL0090, located at Uggoon Upper, Co. Cork, and the NIS submitted by the applicant is also described as being for a Clearfell and Reforestation project CK10-FL0090, located at Uggoon Upper, Co. Cork, whereas the screening and assessment undertaken by the Minister refers to the correct location that being for project CK10-FL0090, located at Carriganes, Co. Cork.

The FAC finds that the correct location of the project does not appear to be mentioned in either the Applicant's pre-screening document or the NIS. The FAC further considers that these contradictions have not been addressed in the assessment and reasoning recorded in the documentation of the Minister. The FAC considers that it is a significant error to rely on an NIS which has been carried out having recorded an incorrect location for the project as this may have impacted on the accuracy of any spatial analysis done to inform same and that it is misleading in the context of the publication of the NIS as it indicates an incorrect location for the project.

In relation to In-Combination assessment 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 it is not clear that the potential for significant effects to arise from the proposal in-combination with other

plans and projects was considered by the DAFM as these were ruled out at screening stage for screened out sites on the basis that there is no likelihood of residual effect(s) that might arise, which are not significant in themselves, creating a significant effect in combination with other plans and projects. In the FAC's view, the reference to 'residual effects' in the In-Combination report / assessment on file that appears to deal with the screened-out sites, creates confusion as it is not clear what effects are being referred to in this instance and there is no explanation as to what gives rise to these effects such that they can be described as being 'residual'.

The FAC finds that the In-Combination assessment dated 11/09/2023 is described as being an Appendix to an 'Appropriate Assessment Report' however no Appropriate Assessment Report is to be found on file. This In-Combination assessment contains the following passage as part of its statement.

"It is concluded that there is no possibility that the proposed Felling and Reforestation project CK10-FLO090, with mitigation measures set out in Section 4 of the AAD, will itself, i.e. individually, giving rise to an adverse effect on the integrity of any European Sites and their associated Qualifying Interests / Special Conservation Interests and Conservation Objectives'.

From this passage the FAC notes that the In-Combination Assessment which is dated 11/09/2023 relies on a report (AAD) that postdates it (13/09/2023). The FAC considers this to be a further error in the processing of the application. The grounds make a general reference to the replanting of the lands not being assessed which is contested by the Minister. The FAC has already recorded that the Appropriate Assessment process should be undertaken again but it does note that the application provided details of the replanting following felling and that the NIS and AAD referred to effects from the replanting operations.

In reviewing the documentation on file, the FAC noted that condition 10 of the licence states that "only minor site level changes in the interest of environmental protection are permitted." The FAC considers that the wording of this condition is insufficiently clear as to the meaning of the words "only minor" and therefore the words are open to a wide interpretation. The FAC considers that the lack of a consistent and objective interpretation of "only minor" that would ensure the implementation of the condition for its intended purpose constitutes a serious and significant error in the making of the decision in this case.

The FAC noted that mitigation marked (h), as set out in the AAD, states 'At reforestation, install a 10 metre wide undisturbed and unplanted water setback alongside the aquatic zone(s), in accordance with Table 5 of the Environmental Requirements for Afforestation and as per the Harvest Plan. Reason: In the interest of the protection of water quality and to ensure the protection of the European sites during harvesting and restocking operations'. The FAC considers that the Minister has set a minimum standard for the content of Harvest Plans in the Standards for Felling & Reforestation (DAFM,2019), and that the application included Harvest Plan maps but did not include a Harvest Plan. The FAC is aware that the original Environmental Requirements for Afforestation (ERA) document was published in 2016 but noted that the only version of the ERA on the DAFM website is labelled as "Working Document v.31Aug23". In addition, it appears that no Circular has issued to clarify the status of this document or how a licence holder should

interpret the related conditions on their licence. The FAC considers this to be a serious error that should be addressed in the making of a new decision. Notwithstanding this, the FAC notes that the applicants pre-screening, and NIS documentation describes the site several times as having a moderate slope and having a soil type that is predominantly peat. Similarly, the NPWS submission makes several references to the slope on the site being steep and the soil type being peat in passages such as the following;

'Regarding the NIS and CO's it is important for the FS to note and address the fact that the proposed clearfell involves a plantation on peat soil (where a former blanket bog was planted) and that it slopes steeply down towards the SAC with numerous direct hydrological connections with the nearby SAC. Though some relevant water courses have been identified on the Harvest Plan Map others have been omitted/not identified. For example each of the internal old field boundaries have extra relevant watercourses associated with them with more also on the boundaries of the site. In addition a large number of drains occur within the site also, all also draining directly downslope towards the SAC with most containing standing or flowing water even in dry weather. A range of approximately 1-3 foot depth of sediment/peat is evident in most of the relevant watercourses and drains. A similar depth of deposited peat sediment is evident in hollows, old furrows or windblows scattered within the proposed area for felling. These are hotspots onsite that can give rise to heightened risk of sedimentation. Some of the sediment moving within the site involves marl. Some of the drains seem to have old mini dams (just to the top of the drain) in place, presumably put in 36 years ago, but these appear to have been ineffective judging by the accumulation of a similar depth of peat in each subsequent downslope section'.

In this regard the FAC finds that Condition (h) in the AAD requires the installation at reforestation of a 10m water setback, in accordance with Table 5 of the Environmental Requirements for Afforestation. The FAC noted that both Table 5 of the ERA (2016), and Table 4 of the ERA (v.31Aug23) require a minimum water setback of 20m for moderately sloping sites with peat soils/soils with peat component. The FAC concluded that the setback in the licence should be greater than the 10m stipulated and that this represents a further error in the processing of the licence.

The FAC also noted that mitigation as set out in the AAD at the mitigation marked I states;

'Silt and sediment control measures shall be installed, where required, along the channel of all relevant watercourses that are connected, directly or indirectly, to any aquatic zone. Silt and sediment control measures must be of an appropriate type, (including porosity where a geotextile is used), of sufficient number and size to provide adequate interception and retention time for the deposition of silt, with consideration of the weather and site conditions in the area. Silt and sediment control measures to adhere to the specifications set out in Section 7 of the Standards for Felling & Reforestation (or acceptable alternatives). Vegetation within the relevant watercourse is to be left intact Reason: In the interest of the protection of water quality and to ensure the protection of the European sites during harvesting and restocking operations.'

The FAC considers that the wording of this condition is insufficiently clear as to the meaning of the words "where required" and therefore the words are open to interpretation. The FAC considers that the lack of

a consistent and objective interpretation of “where required” that would ensure the implementation of the condition for its intended purpose constitutes a serious and significant error in the making of the decision in this case.

The FAC concluded that the decision in relation to licence CK10-FL0090 should be set aside and remitted in accordance with Section 14B of the Agriculture Appeals Act 2001, as amended, and given the nature of the errors, the FAC considered that the Minister should request a new NIS or prepare an Appropriate Assessment Report that identifies and assesses likely significant effects on European sites of the proposal itself and in-combination with other plans and projects and, where they occur, mitigation measures and an assessment as to whether the proposal would impact on the integrity of a European site. Whichever approach is adopted, the FAC considers that a new period of public consultation should be undertaken. The FAC also considers that the DAFM should address the other errors identified previously in this letter prior to the making of a new decision.

Yours sincerely,


Seamus Neely,
On Behalf of the Forestry Appeals Committee