



5<sup>th</sup> December 2024.

**Subject:** FAC 098/2023 and FAC 099/2023 regarding CN91655

Dear

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

#### **Hearing**

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 the appeals. A hearing of appeals FAC 098/2023 and FAC 099/2023 was held remotely by the FAC on 19<sup>th</sup> June 2024.

#### **Hearing**

In attendance

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

Secretary to the FAC: Ms. Aedin Doran.

#### **Decision**

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, and all other submissions received, and in particular, the following considerations, the FAC has decided to set aside and remit the decision of the Minister regarding licence CN91655. The reasons for this decision are set out hereunder.

#### **Background**

A licence (CN91655) for the afforestation of an approved area of approximately 17 hectares, at Farmullagh, County Longford was issued by the DAFM on the 7<sup>th</sup> December 2023.

The project would involve the afforestation of an approved area of approximately 17 hectares comprising six plots with a mix of 50% birch and 50% additional broadleaves in four of the plots and bio in the remaining plots. The licence also included for 2,400 metres of fencing. The site is accessed via the public road network. The project area is described in the file documentation as an enclosed and not an exposed site with a soil composition of mineral/peat. High Voltage lines cross the site east west between Plot 6 and the remainder of the project area.

The site is shown to be located on EPA mapping within the River Sub-Basin Legga Stream\_020. Mapping data indicates the status of the waterbody as moderate. In relation to risk the waterbody is recorded as being at risk and industry, hydromorphology, and agriculture are identified as the significant pressures in the sub basin (Cycle 3 HA 36 Erne Catchment Report, May 2024). The waterbody status has improved from poor to moderate with high confidence SW 2016-2021.

#### **Applicant Documentation**

The application submitted included mapping (including a biodiversity map and a fencing map) and a pre-approval submission report which were marked as uploaded on the Forestry Licence Viewer (FLV) on the 24th October 2022.

A revised biodiversity /operational map was submitted following a request for further information from DAFM in correspondence dated the 3rd January 2023 and is marked as uploaded on the FLV on the 7th March 2023.

This map, following examination by the FAC, appears to be the same as the original biodiversity map. Following a request for further information as issued to the DAFM by the FAC and as referred to later in this letter a further biodiversity map dated the 9th January 2023 was marked as uploaded on the FLV on the 21st June 2024.

#### **DAFM Assessment**

The application was subject to desk and field assessment by the DAFM.

#### **Appropriate Assessment Screening Report & Determination (AASRD)**

An AASRD dated 1<sup>st</sup> March 2023 and uploaded on the FLV on the 7th March 2023 prepared by a consultancy identified two sites (Lough Oughter and Associated Loughs SAC IE0000007 and Lough Oughter Complex SPA IE0004049) within 15 kilometres of the proposal. Both sites were screened in as there is said to be a hydrological connection between the project and these European sites.

Appendix A of the AASRD included an In-combination report indicated as completed on the 1<sup>st</sup> March 2023 which concluded *"that there is no likelihood of the proposed afforestation project CN91655 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"*.

#### **Appropriate Assessment Report (AAR).**

An AAR dated 1<sup>st</sup> March 2023 and marked as uploaded on the FLV on the 7th March 2023 prepared by the same consultancy as the AASRD assessed the two screened in sites and assessed the potential for the project itself (i.e. alone) to have an adverse effect on the integrity of the screened in European Sites as identified on a precautionary basis. Site-specific mitigation measures are identified and outlined to prevent or mitigate against such effects and the report indicates these to be inserted as conditions of the licence / approval, if subsequently issued.

The AAR concluded that the proposed Afforestation project under CN91655, with mitigation measures identified, will itself (i.e. individually) not result in any adverse effect or residual adverse effects on the integrity of the European site(s) listed above. It also states that the project was considered in combination with other plans in the area that could result in potential significant cumulative effects on these European site(s) and that no potential significant cumulative effects are predicted with the said plans and projects listed in Appendix A. It also states that 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 any European Site. This is said to relate to the proposed activities under this project only and that any subsequent forestry-related activity requiring consent/grant aid shall be subjected to the DAFM Appropriate Assessment Procedure, including an in-combination assessment with the current proposal, prior to any future consent being granted.

Appendix A of the Appropriate Assessment Report included an In-combination report indicated as completed on the 1<sup>st</sup> March 2023 and an In-Combination Statement which concluded;

*"that there is no possibility that the proposed afforestation project CN91655, 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. 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 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.*

- *Lough Oughter And Associated Loughs SAC IE0000007.*
- *Lough Oughter Complex SPA IE0004049.*

*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).*

*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".*

A further In-Combination Statement completed on the 9<sup>th</sup> November 2023 and uploaded on the FLV on the 07/12/2023 concluded;

*“that there is no likelihood of the proposed Afforestation project CN91655, when considered individually, having a significant effect on the relevant European Site(s), as described elsewhere in the Screening Report. There is no likelihood of residual effects that might arise from this project, which are not significant in themselves, creating a significant effect in-combination with other plans and projects. The relevant Qualifying Interests / Special Conservation Interests and Conservation Objectives, as listed elsewhere in the Screening Report, have been taken into consideration in reaching these conclusions. Furthermore, it is considered that the regulatory systems in place for the approval, operation (including any permitted emissions) and monitoring of the effects of other plans and projects are such that they will ensure that they do not have any significant effect on those same European Site(s). There is no likelihood that the proposed project will have, or contribute to, any significant effect on those same European Site(s), when considered in combination with other plans and projects. Note that those European Site(s) upon which, a likelihood of a significant effect arises when considering the project individually, are screened in and will be progressed to, and addressed in, Stage 2 Appropriate Assessment”.*

#### **Appropriate Assessment Determination (AAD)**

An AAD dated 25/09/2023 and marked as uploaded on the FLV on the 07/12/2023 prepared by a consultant on behalf of DAFM makes reference to additional information in relation to the Appropriate Assessment; there was a 30-day public consultation period to allow for submissions or observations in writing concerning the application and no submissions were received.

The AAD determined that adequate information was available to enable an Appropriate Assessment Determination to be reached for this project. It states that the Minister has carried out the Appropriate Assessment of the potential impacts of the likely significant effects of Afforestation project CN91655 on those European sites ‘screened in’ 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 as outlined is implemented. The AAD also includes an Appropriate Assessment Report Appendix A: In-combination report for Afforestation project CN91655 and which indicates the In-Combination Statement was completed on the 22<sup>nd</sup> September 2023. The report concludes that:

*It is concluded that there is no possibility that the proposed Afforestation project CN91655, with the mitigation measures set out in Section 4, will itself, i.e. individually, adversely affect the integrity of those European Site(s) screened in (as listed elsewhere in this AA Report).*

#### **Inspector's Certification Report**

The Inspector's Certification Report is dated 7<sup>th</sup> December/2023 and marked as uploaded on the FLV on the 7<sup>th</sup> December 2023 with the date inspection certified as th 4<sup>th</sup> December 2023. This certification recommends approval subject to conditions.

#### **Assessment to Determine EIA Requirement**

An Assessment to Determine EIA Requirement is dated 7<sup>th</sup> December 2023 and marked as uploaded on the FLV on the 7<sup>th</sup> December 2023 with the date inspection certified as the 4<sup>th</sup> December 2023 and determined EIA not required. The FAC noted the following as contained in the assessment form;

- "Was the application referred to the necessary Consultation Bodies, as required by referral procedures?" The DAFM answered "Yes". In response to the question, "Were all of the referral responses received, and observations / recommendations therein, given due consideration?" the DAFM stated "No".

### **Referrals**

The FAC noted, based on documentation submitted, that the application was not the subject of referral to any statutory body.

### **Decision**

The decision was to approve and the licence was issued on the 7<sup>th</sup> December 2023 and uploaded to FLV on the same date subject to five conditions which in addition to general related conditions included a condition referring to the requirements as set out in the AAD.

### **Appeals**

There are two appeals against the decision to grant the licence. The full grounds of appeal were considered by the FAC and are to be found on file. The Notice of Appeals and full grounds of the appeals were provided to the parties.

In summary, the grounds of FAC 098/2023 submitted that;

- There is concern raised in relation to the setback distance from the appellant's dwelling, that the dwelling will be surrounded on three sides with impact on light to the property and there is also a potential fire risk.
- There is reference is made to an aquatic zone and the issue of setback from these zones.
- The lack of consultation is raised
- It is contended that hedgerow lines are missing and setbacks from hedgerows are not shown.
- Setback distance from a water abstraction point is not shown and that a watermain's corridor of 15 metres is not shown and 5 metre setbacks from watercourses are not shown.
- Reference is made to an operational quarry nearby.
- A Map was submitted with the grounds.

The grounds of appeal in appeal FAC 099/2023 raises broadly the same issues as is outlined in appeal FAC 098/2023.

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

The DAFM provided a statement (SOF) to the FAC in relation to the appeals which was provided to the relevant parties. In summary, the SOF outlines the procedure adopted by the DAFM in processing the application, the related dates and the final decision. It is submitted (among other matters) that the decision was issued in accordance with DAFM procedures, SI 191/2017 and the 2014 Forestry Act.

The statement also addresses the grounds of appeal and included the following content;

*"All licence applications are treated in the same manner with Label Numbers assigned to each parcel by the Forestry Licence Viewer. Label numbers are assigned to the parcels for display purposes to aid the users and as such have no relationship with the plot numbers in forestry".*

*It is also stated "Standard Operating Procedure Afforestation Scheme/Licences December 2023 adhered too. Site inspection carried out 14 November 2022, 01 November 2023. Condition of the licence that the afforestation project and all associated operations shall be carried out and completed in accordance with the measures set out in the Environmental Requirements for Afforestation and the Forestry Standards Manual (as amended by periodic Circulars). Hedgerows, relevant water courses, aquatic zones are clearly shown on the updated bio maps supplied via further information request after a field inspection identified some deficiencies with the original bio maps".*

*It is further stated that "site also visited by an ecologist separately; that the Bio map dated 9/1/2023 does indicate 2 metre setbacks from all hedgerows. The appropriate assessment process took place following this. As per mitigation in the Appropriate Assessment Determination dated 25/09/2023 this was upgraded to a 3-meter setback to be applied from all hedgerows on site including external hedgerows. 5 metre setbacks from all relevant watercourses is indicated on bio map dated 09/01/2023".*

### **Post Appeal Correspondence**

Following a consideration of the appeal at a hearing on 19/06/2024 the FAC sought clarification from the DAFM on a number of matters. The content of the clarification request made by the FAC is as follows;

*"The FAC notes that the requirements to be met in making an application for an afforestation licence are set out in Section 22(2) of the Forestry Act 2014 and Section 5 of the Forestry Regulations 2017 where it states that an application for a licence in respect of afforestation shall, inter-alia include;*

*'(b) a plot table, which shall accompany the map, detailing the number of each plot, the area of each plot, and the species of trees to be planted in each plot'.*

*The FAC wishes to be provided with a copy of the application materials relied on to meet the requirement at (b) above. It would also appear that the appellant submissions relating to this application has included what appears to be a copy of a plot map for the proposal which is not available on the Forestry Licence Viewer (FLV).*

*The FAC notes that on the 3rd January 2023 a revised biodiversity map was requested by the DAFM and this map would not appear to be uploaded on the FLV although it is referenced in the DAFM SoF submission and the grounds of appeal. The FAC noted that the appellants have included what appears to*

be a copy of this map along with Appeal documentation. The FAC wishes to be provided with a copy of this revised biodiversity map.

The FAC notes that the post appeal submission made by the appellants raise the location of a public water main and a pump house located on the project site and queries if appropriate wayleave set backs have been provided relating to these in the proposal / licence. The FAC invites a response from the DAFM on these points”.

DAFM in repending to this request submitted three responses.

The text of the response from DAFM dated 21st June 2024 is set out below.

*“Regarding the revised Bio Map, it was made public on the FLV but was labelled as ‘Maps Scanned Docs’ as there were limitations to the letter types available on the dropdown at the time it was made public. We have since updated the letter types and I have labelled the Revised Bio Map as of today so that it is clear on the FLV. I have also attached the Revised Bio Map for your records”.*

The text of the response dated 27th June 2024 from DAFM is set out below.

*“According to the mapping information supplied by Irish water and available as a layer on Iforis, there are no water mains or for public pump houses on the project site.*

The text of the response dated 3rd July 2024 from DAFM is set out below.

*“DAFM do not request a species map for afforestation cases at the registration stage”.*

### **Consideration of FAC**

In addressing the grounds of appeal, the FAC considered the completeness of the assessment of the licence application and an examination of the procedures applied which led to the decision to grant the licence. The FAC also had regard to the documentation provided through the DAFM’s FLV as notified to the parties, the notices of appeal, and the statements provided by the DAFM.

In relation to Appropriate Assessment (AA), the FAC noted that two European sites are recorded in the Appropriate Assessment Screening Report & Determination (AASRD). The FAC noted that the proposed afforestation is not within a Natura 2000 site nor is it required for the management of a Natura 2000 site. The FAC has confirmed that the two sites identified for screening in the final Inspector’s Certification Report are the only sites within a 15Km threshold distance for impacts to Natura 2000 sites and were the subject of an Appropriate Assessment Report and Appropriate Assessment Determination in relation to the potential impacts of the likely significant effects of Afforestation project CN91655 on the European sites screened in The FAC noted the DAFM’s conclusion 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 prescribed mitigation as outlined is implemented.

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, if required, 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.

In reviewing the submitted documentation in relation to the DAFM's in-combination assessment the FAC noted there were four in-combination statements and reports prepared during the DAFM assessment of the project and which are uploaded on the FLV. The contents of the in-combination statements/report have been outlined previously in this letter. Briefly these in-combination statements/reports are in the following chronological sequence;

- An AASRD dated 1<sup>st</sup> March 2023 which identified two sites and that both sites were screened in with a document described as Appropriate Assessment Screening Report Appendix A: In-combination report for afforestation project CN91655 indicated as completed on the 01/03/2023.
- An AAR dated 1<sup>st</sup> March 2023 with a document described as Appropriate Assessment Report Appendix A: In-combination report for afforestation project CN91655 indicated as completed on the 01/03/2023.
- An AAD dated 25<sup>th</sup> September 2023 which makes reference to additional information in relation to the Appropriate Assessment; there was a 30-day public consultation period to allow for submissions or observations in writing concerning the application and no submissions were received. The AAD includes a document described as Appropriate Assessment Report Appendix A: In-combination report for Afforestation project CN91655, which indicates the In-Combination Statement as completed on the: 22<sup>nd</sup> September 2023.
- A further In-Combination Statement indicated as Appropriate Assessment Screening Report Appendix A: In-combination report for Afforestation project CN91655 and indicated as completed on the 9<sup>th</sup> November 2023.

The FAC notes that the in-combination assessment which was completed on the 1<sup>st</sup> March 2023 bears the same date as the AASRD and AAR. The FAC also noted that the AAD which bears the date 25<sup>th</sup> September 2023 refers to and includes Appropriate Assessment Report Appendix A: In-combination report for Afforestation project CN91655 with an In-Combination Statement which is dated as completed on the: 22<sup>nd</sup> September 2023. There is also a further Appropriate Assessment Screening Report Appendix A: In-combination report for Afforestation project CN91655 stated as completed on the on the: 9<sup>th</sup> November 2023.

It is unclear which In-Combination Statement was relied upon by the DAFM in their in-combination assessment as the In-Combination Statement in the AAD is labelled as being an Appendix A of an AA Report. While this error in isolation may be considered clerical in nature, the In-Combination Statement in this document (dated 22<sup>nd</sup> September 2023) indicates that it relies on the application of mitigation measures set out in Section 4 of the AAD, but the AAD was not completed until the 25<sup>th</sup> September



2023. The FAC consider that the In-combination Assessment cannot predate a report on which it relies. The FAC also found on file a further In-Combination Statement labelled as *Appropriate Assessment Screening Report Appendix A: In-combination report for Afforestation project CN91655* which was completed on 9<sup>th</sup> November 2023. It is unclear why this additional in-combination screening document was produced after the AAD had been completed. Furthermore, the In-Combination Statement in this document appears to screen out the proposal for Stage 2 AA, stating “It is concluded that there is no likelihood of the proposed Afforestation project CN91655, when considered individually, having a significant effect on the relevant European Site(s).” The FAC considered this to be a further error in the DAFM’s processing of the application for CN91655.

The FAC considered that the record of the DAFM’s Appropriate Assessment process should provide for a clear chronological sequence in its decision-making in the processing of the application and the absence of this represents a serious error in the DAFM’s assessment of the project.

The FAC noted that the In-combination Statements at screening stage for project CN91655 included wording to the effect 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 reports / assessments on file dated 1<sup>st</sup> March 2024 and 9<sup>th</sup> November 2023, (notwithstanding the sequencing error referenced above) 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’ at this stage in the screening process and determination. The FAC would understand that the term residual is generally used in the context of what remains after an action is undertaken. In the context of Appropriate Assessment (AA) the term ‘residual effects’ is more commonly employed in relation to the consideration of what effects remain after mitigation measures have been assessed as part of the AA. For example, the Department of the Environment, Heritage and Local Government has published a guidance document on Appropriate Assessment entitled *Appropriate Assessment of Plans and Projects in Ireland Guidance for Planning Authorities (DEHLG, 2009)*. This document states on page 40,

‘If the competent authority considers that residual adverse effects remain, then the plan or project may not proceed without continuing to stage 3 of the AA process: Alternative Solutions’.

In the context of undertaking the screening again the FAC considers that the Minister should correct this language to avoid the introduction of any unnecessary confusion.

The FAC also noted that all of the in-combination statements rely on what is stated to be the current Longford County Development Plan which was examined and was indicated as the Longford County Development Plan 2015- 2021. The FAC notes that this plan had been superseded by a subsequent statutory county development plan when these documents were completed, and this constitutes a significant error.

The FAC also noted that all of the in-combination statements rely on that is stated as the current Longford County Development Plan which was examined and was indicated as the Longford County Development Plan 2015- 2021. The FAC notes that this plan had been superseded by a subsequent statutory county development plan when these documents were completed and this constitutes a significant error.

In relation to Environmental Impact Assessment, the FAC noted that the DAFM carried out an Assessment to Determine EIA Requirement that is marked as certified on the 4<sup>th</sup> December 2023 and also bears the date 7<sup>th</sup> December 2023. In this assessment the Inspector recorded a consideration of the application across a range of criteria relevant to the proposed afforestation, including water, soil, terrain, slope, designated areas, landscape and cumulative effects, and determined that the project was not required to undergo EIA. The FAC noted the following:

The DAFM answered "Yes" to the question "Was the application referred to the necessary Consultation Bodies, as required by referral procedures?". In response to the question "Were all of the referral responses received, and observations / recommendations therein, given due consideration?" the DAFM answered "No". In this regard it was noted by the FAC that the application based on documentation submitted indicates that the application was not the subject of referral to any statutory body. This is noted as an error but in the context that no referral was made, the FAC did not consider this a significant error.

Specific to the grounds of appeal the appellants have raised concerns in relation to the proximity of the project to their dwellings and the issue of setbacks. The issue of having forestry on three sides is raised and potential impacts arising in relation to loss of light and from fire.

The FAC noted the reference to plot numbers but the documentation submitted provides for a schedule of plots and the mapping also provides details in relation to plots and their location.

The FAC noted that the site was the subject of a site inspection and that the conditions attached to the decision to grant the licence did require that the afforestation project and all associated operations shall be carried out and completed in accordance with the measures set out in the Environmental Requirements for Afforestation and the Forestry Standards Manual. The manual and guidance indicate that 60 metres is the required setback with a smaller setback allowable to a minimum of 30 metres if written agreement of the neighbouring dweller. It is noted that the project provides for a mix of 50% birch and 50% additional broadleaves in four of the plots and unplanted "Bio" in the remaining plots nos 1 and 3 which are in close proximity to dwellings and the project does not provide for conifer plantation and the FAC considered that impact arising to loss of lighting on the dwellings is therefore ameliorated.

The FAC considered that there is no convincing evidence before it to indicate that the vicinity of the proposal is at an elevated risk of forest fires. The FAC also noted the setbacks required by the licence conditions from the adjacent buildings. Based on the information before it, the FAC found that no

significant or serious error was made in the making of the decision by the Minister to grant CN91655 regarding this ground of appeal.

In relation to the issue of hedgerows and the mapping of their location the FAC noted that the revised biodiversity map indicates that the site was the subject of inspection. In relation to the issue of setback from hedgerows the FAC noted that department guidance does provide for setback from hedgerows and that as per mitigation in the Appropriate Assessment Determination dated 25/09/2023 this was upgraded to a 3-meter setback to be applied from all hedgerows on site including external hedgerows which increased the setback stated on the biodiversity mapping. Based on the information before it, the FAC found that no significant or serious error was made in the making of the decision by the Minister to grant CN91655 regarding this ground of appeal.

In relation to setback from watercourses and aquatic zones such features are indicated on the updated Bio maps following a request of further information with a 5 metre setback from all relevant watercourses and a 10 metre setback from aquatic zones and this is included in the conditions of the licence decision.

The issue of a watermain and a water abstraction point is noted and the response of DAFM on this matter that according to the mapping information supplied by Irish water, there are no water mains or for public pump houses on the project site.

Guidance and manuals in relation to this matter provides that an abstraction point of any surface waters, borehole, spring or well used for the abstraction of water for human consumption in a water scheme supplying 1 m<sup>3</sup> or less of water per day or serving 10 or less persons requires a setback of 5 metres and larger schemes supplying 1 to 10 m<sup>3</sup> of water per day or serving 10 - 50 persons requires a setback of 25 metres. Based on the information submitted the FAC found that no significant or serious error was made in the making of the decision by the Minister to grant CN91655 regarding this ground of appeal but would note that the guidance and manual do provide for setback from points of abstraction and that the conditions attached to the decision to grant the licence did require that the afforestation project and all associated operations shall be carried out and completed in accordance with the measures set out in the Environmental Requirements for Afforestation and the Forestry Standards Manual.

In relation to the presence of a quarry in the area the FAC noted on mapping the location of the quarry and there is no evidence to suggest the presence of the quarry and associated operations would impact on the project.

In relation to the Water Framework Directive and effects on water quality generally the FAC viewed the information on the EPA and Irish Catchments websites and current mapping and data which confirmed that the project is within the River Sub-Basin Legga Stream\_020. Mapping data indicates the status as moderate and in terms of risk is at risk. In relation to risk industry, hydromorphology, and agriculture are

identified as the risks in the sub basin and that the status has improved from poor to moderate with high confidence SW 2016-2021.

The FAC noted that the documentation submitted includes details for setbacks from watercourses and aquatic and also noted that the conditions of the licence decision require operations are carried out in accordance with Forestry guidelines as they relate to water quality. The mitigation measures in the AAD prevent the use of fertiliser on the project site and the application of herbicides within specified water and building setbacks.

The FAC also noted that Appendix A of the licence decision requires that operational proposals that have been approved and must be implemented in full as conditions of both the Afforestation Licence and the Technical Approval for the Afforestation Scheme. In this regard, the FAC noted that the Operational Proposal Details in Appendix A of the licence contains a response of "Not Entered". As this decision is being set aside and remitted for reasons identified elsewhere in this letter, the FAC considered that this matter should be addressed by the Minister to provide for clarity in relation to operational proposals proposed or required for the project.

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal, submissions made, and the statement of fact submitted by the DAFM. In accordance with Article 14B of the Agricultural Appeals Act 2001 (as amended) based on the evidence before it, as outlined above the FAC is satisfied that a series of significant or serious errors was made in the making of the decision CN91655. The FAC is thus, setting aside and remitting the decision of the Minister regarding licence CN91655 in accordance with Section 14B of the Agriculture Appeals Act 2001, as amended to carry out an Appropriate Assessment screening of the proposal itself and in combination with other plans or projects under Article 6(3) of the EU Habitats Directive and to address the issues identified previously in this letter before making a new decision in relation to CN91655.

Yours sincerely,

---

Derek Daly On Behalf of the Forestry Appeals Committee