



03/05/2024

**Subject: Appeals FAC133/22, FAC134/22, FAC136/22, FAC137/22, FAC138/22, and FAC139/22 in
relation to Afforestation Licence CN90896**

Dear

I refer to the appeals to the Forestry Appeals Committee (FAC) in relation to the above licence issued by the Minister for Agriculture, Food, and the Marine (the Minister). 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 all parties to the appeal.

Hearing & Decision

Having regard to the particular circumstances of this case, the FAC considered that it was not necessary to conduct an oral hearing in order to properly and fairly determine your appeal. Appeals numbered FAC133/22, FAC134/22, FAC136/22, FAC137/22, FAC138/22, and FAC139/22 were considered during a sitting of the FAC held remotely on the 15/11/2023 which was attended by the following participants:

FAC Members – Mr. Donal Maguire (Chairperson), Mr. Derek Daly, and Mr. Luke Sweetman.

FAC Administration – Ms. Vanessa Healy

The record of the Minister's decision was made available to the FAC by way of the Forestry Licence Viewer¹ (FLV). The FAC considered all of the evidence before it, including the record of the decision by the Department of Agriculture, Food, and the Marine (DAFM), the grounds of appeal, the DAFM's Statement of Facts (SoF), and all other submissions, before deciding to set aside the Minister's decision to grant afforestation licence CN90896, for the reasons outlined hereunder.

Licence Details

The licence under appeal was issued by the DAFM on the 08/09/2022 and is for 17.79 ha of native woodland afforestation (including Birch, Sessile oak, Scots pine, and additional broadleaves) in the Townland of Moneenreave, Co. Leitrim. The licence was issued with relatively standard conditions and also includes Condition 5 "Any additional conditions, that are over and above what is specified in the application" which includes requirements relating to the retention of all trees and hedgerows within the site, adherence to certain standards and guidelines, the Southern Waterways Trail, water setbacks, and retention of a specific area of scrub habitat on site.

Site Details

¹ <https://flv.apps.services.agriculture.gov.ie/>

The *Site Details Report* states the soil type is mineral, and the site is enclosed, agricultural land with a northerly aspect, which is moderately exposed. The vegetation type(s) are described as Grass/Rush and site access is stated to be adequate. Publicly-available mapping from the EPA² and GeoHive³ indicates the site is almost entirely underlain by “Surface water Gleys, Ground water Gleys” and the elevation of the site is between 130m – 230m. The *Appropriate Assessment Screening Report* states that the slope is flat to moderate (<15%).

The proposal is in the 26A Upper Shannon Catchment, the 26A_4 Arigna [Roscommon]_SC_010 Sub-Catchment, and the Tarmo_010 River Sub-Basin. The Tarmo_010 river waterbody rises just outside of and passes through the western ‘arm’ of the proposed area and flows approximately 2.7km to Lough Allen. Publicly-available information on Catchments.ie⁴ shows the TARMO_010 river waterbody currently has ‘Good’ status (assessed by modelling – “low confidence”) for the 2016-2021 period and its risk status is under review. Allen Lake Waterbody currently has ‘Moderate’ status and is ‘At Risk’ from “Ag, Other”. The proposal is underlain by the Lough Allen Uplands Ground Waterbody which has ‘Good’ status and is ‘Not at Risk’.

DAFM Processing of the application

Assessment to Determine Environmental Impact Assessment (EIA) Requirement

The application was desk-assessed and certified on the 07/09/2022. In assessing the application, the DAFM completed an “Assessment to Determine EIA Requirement” dated the 08/09/2022 and which was uploaded on the FLV on the same date. This EIA assessment considered the proposal’s potential impact on the environment across a range of criteria before concluding that the application should not be “subject to the EIA process”. The assessment included the following information:

- The answer to the question “Is the amount and type of forest cover in this locality known to be a significant issue?” is “Yes” and the Inspector’s comment box states that “Submissions from members of the public noted and considered”.
- In response to the question “Is the site within an area designated as sensitive to fisheries?” The answer is “No”.
- The site is within a High Amenity Landscape and within a prime scenic area in the County Development Plan or within an area listed in the Inventory of Outstanding Natural Landscapes or in a Landscape Conservation Area
 - Comments from the Local Authority were requested, received, and examined.

DAFM Appropriate Assessment (AA) Process

The record of the DAFM’s AA screening before the FAC comprises an AA Screening Report and an AA In-Combination Statement. The AA Screening Report was certified on the 07/09/2022 and posted on the FLV on the 08/09/2022. The In-Combination Statement was completed on the 06/09/2022 and posted on the FLV on the 07/09/2022.

The AA Screening Report was completed by a Forestry Inspector and screened five European sites in the “likely zone of impact” of within 15km from the proposal. All sites were screened out for AA with the following reasons provided:

- **Boleybrack Mountain SAC 002032**

² [EPA Maps](#)

³ [GeoHive Map Viewer](#)

⁴ [Data - Catchments.ie - Catchments.ie](#)

- “The position of the project area downstream from the Natura site, and the subsequent lack of any hydrological connection”.
- **Cuilcagh - Anierin Uplands SAC 000584**
 - “The position of the project area downstream from the Natura site, and the subsequent lack of any hydrological connection”.
- **Lough Arrow SAC 001673**
 - “The location of the project area within a separate water body catchment to that containing the Natura site, with no upstream connection, and the subsequent lack of any hydrological connection. Upper Shannon 26a”
- **Lough Arrow SPA 004050**
 - “Other factors, distance”
- **Lough Gill SAC 001976**
 - “The location of the project area within a separate water body catchment to that containing the Natura site, with no upstream connection, and the subsequent lack of any hydrological connection. Upper Shannon 26A”

The overall screening conclusion was to screen out the proposal for AA due to there being “No likelihood of a significant effect on any European site”.

The AA In-Combination Report indicates that the potential for the proposal to contribute to an in-combination impact on European sites was considered by the DAFM having consulted various online planning systems and datasets on the 06/09/2022 in order to identify other plans and projects, focusing on “the general vicinity of the project area in the River Sub-Basin Tarmo_010”. The In-Combination Statement concludes that “there is no likelihood of the proposed Afforestation project CN90896 itself, i.e. individually, having a significant effect on certain European Site(s) and associated Qualifying Interests / Special Conservation Interests and Conservation Objectives, as listed in the main body of this report. In light of that conclusion, there is no potential for the proposed project to contribute to any significant effect on those same European Site(s), when considered in-combination with other plans and project.”

Referrals

The DAFM referred the application to Inland fisheries Ireland (IFI), An Taisce, the National Parks & Wildlife Service (NPWS), and Leitrim County Council (LCC). IFI did not respond.

The NPWS responded on the 07/07/2022 stating that they had “no comment to make on this application” and attached an appendix containing more general points of relevance.

An Taisce responded on the 27/07/2022 stating that “The proposed application lies 2.6km upstream of Lough Allen and lies adjacent to Corry Mountain Bog NHA (002321)” and outlined their main concerns regarding the proposal’s potential to impact bogs, Otter, Badgers, water quality, and High Nature Value (HNV) lands.

There are two responses from LCC on the FLV. One is from the Planning Section; it is dated the 29/07/2022 but is shown as published on the FLV on 27/07/2022. The other is an Engineer’s Report which is undated but was also published on the 27/09/2022.

In summary, the Engineer’s Report references the Technical Standards Design of Forest Entrances from Public Roads, refers to the proposed access point and the potential haulage route, indicating that the

latter is “sub-standard and unsuitable for forestry traffic.” The Engineer’s Report recommended refusal because “the construction of a forest access at this location and the volume and type of traffic generated by this development will have an adverse impact on road and public safety. Leitrim County Council recommends that this application for a forest access onto a public road is Refused”.

The Planning Section letter states that “the lands are located within a High Visual Amenity Area as in the Leitrim County Development Plan 2015-2021. In terms of Forestry Capacity the site traverses both areas of Medium Capacity (Hatched Blue on map below) and Low Capacity. The Planning Section letter states:

These lands subject of this application are in Landscape Character Type (LCT) 8 “Valley Farmland” as designated in the Capacity Study. The Guidelines for this LCT state that there is very limited scope overall for the introduction of new commercial forestry planting within this LCT.

LCC requested that, if approved, the licence include conditions relating to liaising with the District Engineer and adherence to specific guidelines.

Submissions

There are numerous submissions on the FLV in relation to CN90896, some with names redacted and several from appellants. The main themes reflect those covered in the various grounds of appeal. Reference is also made to a previous application which was apparently withdrawn by the applicant.

Grounds of Appeal and DAFM Response

There are six third-party appeals against CN90896. The grounds of appeal for each have been considered in full by the FAC and were circulated to the relevant parties and are summarised below. The DAFM provided an SoF in response to each appeal and these were also considered in full by the FAC and circulated to the relevant parties.

Grounds of Appeal FAC133/22

- Proposal will surround the appellant’s land, blocking sunlight and views.
- Appellant’s mother is elderly and ill, machinery working for weeks will upset her.
- Already appealed and paid €200 – shouldn’t have to pay again.
- Worried stream on his property would dry up if forest planted.
- It would not be right to plant three sides of his land.

DAFM Response to FAC133/22

- 60m dwelling setback applies. Additional Bio area and setback will ensure a setback from the dwelling of c.100m.
- There may be noise generation during works, but this will be short in duration and a “once-off”.
- Proposed planting methods are pit planting with invert mounding. No new drainage works. Proposal will not have a negative impact on the hydrology of the site.
- Native woodland proposal – impacts on neighbour’s lands will be negligible if detectible.

Grounds of Appeal FAC134/22

1. Undue process – untimely publication of decision.
2. Application not comprehensible – Mapping deficiencies.
3. Using required setback as ABE. No justification that this is the best area.

4. Licence Conditions
 - A second ground also labelled as “4” in the grounds of appeal refers to LCC’s objection and the County Development Plan (CDP).
5. Use of ‘Woody weed removal’ archaic and unclear.
6. The EIA Screening process is flawed.
 - 6.1 Cumulative impact,
 - 6.2 HNV Farmlands,
 - 6.3 Inadequate hedgerow setbacks,
 - 6.4 Article 12 of Habitats Directive (Annex IV species) – strict protection regime of Article 12 separate to AA procedure under 6(3),
 - 6.5 Landscape Impact,
 - 6.6 Water Quality,
 - 6.7. Consideration of Public Comments.
7. Flaws in the DAFM’s AA process.
8. No. 8 is missing, and list of grounds goes straight from 7 to 9.
9. No ecological survey. Project not in keeping with Government principle of right tree in the right place.

DAFM Response to FAC134/22

Administrative Response (points 1, 2 & 4 only):

1. All decisions are published on the Department’s website. It was advertised on the next working day which FAC have previously accepted as normal procedure.

2. The Department would only re-advertise at the first stage if there was material change. The original Bio map included an extra plot and was advertised. The revised Bio map with the plot excluded was made public as part of the Further Information Request (FIR,) and was therefore advertised on its own merits as well as part of the AAR during the 2nd public consultation stage.

4. These are standard conditions which are put into most approvals on afforestation and circulars are provided on www.gov.ie. A layperson may not understand all conditions; however a registered forester will be able to.

Forestry Inspectorate Response (point 1 not addressed):

2. There are minor deviations in mapping colour and legend colours on Bio map, but the maps submitted outline all the required information for DAFM to carry out its assessment.
3. Proposed Bio areas adhere to scheme rules.
4. The licencing conditions as presented are clear, well-reasoned and follow standard operating procedures.
5. Licence is for 17.79ha of native woodland which is in keeping with natural regenerating scrub and woodlands in the local area. A small part of the proposal is in a “low capacity” area, the project is not located in an open area and is not highly visible. The project is not located in a moorland area and is below 300m elevation. DAFM is the competent authority when assessing afforestation licences and the DAFM contend that the proposal will complement the area aesthetically and environmentally.
- 5a. Grounds regarding Valley Farmland landscape type relate to a study conducted for LCC for the draft CDP 2023-2029 which, at the time of submission, had not been enacted. The submission states that “Commercial forestry of appropriate scale may be accommodated”. The Landscape Capacity Study for Commercial Forestry considers conifer plantations to be commercial forestry.

The licence relates is not a single consent road licence or a timber felling license. There is no requirement to provide Technical Standards Design of Forest Entrances from Public Roads. There is no timber haulage or extraction associated with this native woodland afforestation licence. The DAFM is the competent authority in forestry licensing decisions. The licenced area is not within or adjoining a Natura site. The site does not impact woodlands, peatlands, wetlands or artificial waterways, hedgerows are protected and retained as a condition of the licence.

6. Woody weed removal is a standard operation in afforestation sites. All existing trees and hedgerows within the site shall be retained.

7. Standard EIA screening procedures adhered to. The 50ha rule is per application, not for a contiguous area. "The assessment is correct that there will not be a cumulative negative impact".

- HNV farmland is a national policy issue - Teagasc maps are not site specific and are on a DED level with an average indicative figure for a large area.
- Applicants are obliged under law to ensure they conform to the Wildlife Acts that protect wildlife and other protected species.
- Hedgerows present on site are retained under condition "All existing trees and hedgerows within the site shall be retained". Potential disturbance of bat roosting sites, if present, was considered to be negligible.
- Project was screened as per standard operating procedures. The site is outside of SPAs where Hen Harriers are known to occur and is not within a Red Zone as per NPWS data provided to the DAFM. The NPWS had no comment to make on this application.
- Regarding landscape impacts the licence area relates to just under 18ha of native woodland establishment on enclosed agricultural land with a moderate slope overlooking Lough Allen. The local vicinity consists of large well-established hedgerows as well as expansive areas of scrub encroachment and semi natural woodlands, a large conifer block is present to the west of the licence area. DAFM considers the proposal to be moderate in scale, unobtrusive, and unlikely to have a negative impact on visual amenity. Condition of the licence to comply with the requirements of the Forestry & Landscape Guidelines.
- Tarmo_10 has been assigned a status of "good" by the EPA. In the medium to long term there will likely be a positive impact on water quality as the lands are removed from agricultural use. No new drainage, fertilizer or herbicide application is proposed for the license area this is in stark contrast to conventional agricultural management practices.
- All public submissions were assessed and considered.

8. Regarding AA screening standard operating procedures adhered to.

Project is entirely outside of Cuilcagh - Anierin Uplands SAC. No pathway, hydrological or otherwise, to Cuilcagh - Anierin Uplands SAC exists for any potential sources from the project area. No habitats of the qualifying interest for Cuilcagh - Anierin Uplands SAC exist in the project area. The project was assessed as having no possible impact on Cuilcagh - Anierin Uplands SAC and was screened out on that basis.

Lough Arrow SPA is approximately 14km in distance at its closet point and located in a different water catchment, SCIs are Little Grebe (*Tachybaptus ruficollis*) - Wintering; Tufted Duck (*Aythya fuligula*) and Wetland and Waterbirds. Lough Arrow SPA screened out following standard operating procedures.

Point 9 is not listed and the DAFM response goes straight to point 10: "DAFM are satisfied that this proposal has been processed in line with Government Policy".

Grounds of Appeal FAC136/22

- Impacts on tourism – views of Lough Allen. Local community group received funding to develop the area overlooking Lough Allen. Planted trees would obscure significant section of viewing area.
- Local people unanimously opposed to proposal. Previously appealed. Unfair to pay €200 to appeal again.
- Proposal is in Area of High Visual Amenity as per CDP and an area with “Outstanding views and prospects”. Afforestation contravenes policies and objectives of CDP. Refers to report, dated 10/10/2020 – Section 1, sent to FAC highlighting tourism projects including Southern Waterways Trail.
- Refers to CDP 2015-2021 Policy 85 & Policy 102 regarding protecting views in the area.
- Refers to amenity value of area “west of Lough Allen” and specifically the “Top Road” route and the impact Coillte plantations have had on views etc.
- Refers to An Taisce response which highlights CDP’s Objective 81 to protect Areas of High Visual Amenity and notes proximity of proposal to Corry Mountain Bog NHA.

DAFM Response to FAC136/22

- DAFM considers that this licence will have no negative impact on tourism potential in the area, no evidence is provided as to how this licence could have a negative impact on tourism. The licence area adjoins the upper mountain road area for approximately 165m with a 10m setback and native woodland planting.
- The proposal is for c.18ha of native woodland establishment on enclosed agricultural land with a moderate slope overlooking Lough Allen. The local vicinity consists of large well-established hedgerows as well as expansive area of scrub and semi-natural woodlands. A large conifer block is present to the west of the licence area. DAFM considers the licence area to be on a moderate scale and unobtrusive and unlikely to have a negative impact on visual amenity. Condition of the licence to comply with the requirements of the Forestry & Landscape Guidelines.
- “DAFM are satisfied that this proposal has been processed in line with Government Policy”.

Grounds of Appeal FAC137/22

This appellant included a 52-page report with their NOAF which included annotated maps and photographs, and grounds of appeal under the following headings:

1. Health & well-being,
2. Landscape and amenity considerations,
3. Public Road Infrastructure and Access,
4. Water Framework Directive (WFD),
5. Landslide Susceptibility,
6. Windblow,
7. Environmental Assessments,
8. Fire breaks & Bio map & Hedgerows,
9. Site Access & Landlocked,
10. Consultation – houses adjacent afforestation lands,
11. Potential impact on local economy and community,
12. Conclusion - summarises issues raised previously.

DAFM Response to FAC137/22

1. Refers to 60m minimum dwelling setback. Contends proposal will not impact sightlines to neighbours. Contends the area between the proposal and the appellant’s address contains

mature trees and hedgerows. Contends studies show positive impact of forests and green space on mental health.

2. Proposal is for c.18ha of native woodland on enclosed agricultural land with a moderate slope overlooking Lough Allen. Large, well established hedgerows as well as expansive areas of scrub encroachment and semi-natural woodlands in the vicinity. The DAFM considers the licence area to be on a moderate scale and unobtrusive and unlikely to have a negative impact on visual amenity. Minister for Agriculture, Food and the Marine is the competent authority in relation to afforestation licences in Ireland under the Forestry Act 2014.

With regard Scardan waterfall "point 41" waterfall this is located in a publicly accessible Coillte forest 900m distant. Point 40 Flynn's Rock is located approximately 600m from the licence area and not impacted.

Regarding LCC's submission, licence area relates to 17.79ha of native woodland planting in keeping with natural regenerating scrub and woodlands in the local area. A small area of the proposal is in a "low capacity" area, the project is not located in an open area and is not highly visible. The proposal is not located in a moorland area and is below 300m. The DAFM is the competent authority when assessing afforestation licences. The DAFM considers that this proposed native woodland will complement the area aesthetically and environmentally.

3. The proposal is not a single consent road licence or a timber felling license, there is no requirement to provide Technical Standards Design of Forest Entrances from Public Roads. There is no timber haulage or extraction associated with this native woodland afforestation licence. It is unlikely the licence area will ever be clearfelled. Licenced area is not within or adjoining a Natura site.

Site does not impact woodlands, peatlands, wetlands or artificial waterways, hedgerows are protected and retained as a condition of the licence.

The proposal borders a public road which is clearly indicated on the Bio maps, adequate access exists as per section 5.3.2 of the Forestry Standards Manual.

4. The Tarmo_10 the water body has been assigned a status of "good" by the EPA. There will likely be a positive impact on water quality as the lands are removed from agricultural use. No new drainage, fertilizer or herbicide application is proposed for the license area this is in stark contrast to conventional agriculture which generally includes annual spreading of slurry, chemical management of rushes in order to comply with BPS eligibility criteria and the annual impacts of grazing cattle on wet mineral soils resulting in siltation and run-off into aquatic zones.
5. Soil type in the licence area is primarily mineral-based and predominantly surface water gleys and peaty gleys and bears no resemblance to the ground conditions found at the Dawn of Hope landslide. The area the appellant outlines in the grounds of appeal as "of concern" are outside the project area and not impacted hydrologically or otherwise by the afforestation licence. The appellant's evidence suggests the licence area is in fact at a low risk of landslides as per GSI data. Proposed ground preparation is invert mounding in which a mound of earth is turned over by an excavator and placed back into the hole trees are then pit planted into this planting position. No new drainage is proposed. The appellant's contention that a named individual's home is at a "huge risk from a potential landslide if this forestry plantation is to proceed" is entirely unjustified.

Native woodland planting does not present the same acidification risks as conifer plantations in areas of low buffering capacity. Windblow is also much less of a risk.

6. Standard operating procedures adhered to in AA screening.
Regarding Hen Harriers, the project was screened as per standard operating procedures. The site is outside of SPAs where Hen Harriers are known to occur and is not within a red zone – as per NPWS data.
The site is located downhill from Corry Bog NHA and no new drainage is proposed. NPWS had no comment to make on the application.

Lough Arrow SPA is approximately 14km in distance at its closet point and located in a different water catchment.

4.8.3.5 appears to relate to the LCC's AA procedures. The proposal has undergone AA screening as per the DAFM's standard operation procedures.

7. Section 14 (1)of the Forestry Act states; "Where the Minister is satisfied that trees in a forest are at significant risk of being damaged by fire originating on uncultivated land in the vicinity of the forest by reason of the presence thereon of vegetation, **the Minister may serve** on the owner of the land concerned a notice in writing stating that the vegetation constitutes a danger to those trees and directing that the vegetation be removed or destroyed in such manner and within such time as the Minister may specify."
The DAFM contends there is no error related to fire risk.
All hedgerows present clearly shown as per the Forestry regulations 2017 which state under Part 3 Control of Afforestation section 2 point (a).
8. All areas of the licence are accessible for the purpose of the afforestation licence, proposed planting methods includes pit planting.
The maps provided were appropriate and sufficient to facilitate the DAFM's assessment of the application.
9. The licence was processed and advertised in line with the public consultation requirements for afforestation licences as evidenced by the number of submissions on the proposal.
10. The DAFM considers that this licence will have no negative impact on tourism potential in the area, no evidence is provided as to how this licence could have a negative impact on tourism. Recent census data has shown an increase in the population of Leitrim over the previous census cycle. The appellant does not substantiate how this licence will result in the depopulation of the area or impact the local school. Native woodlands are generally considered a positive addition to a locality.
11. DAFM are satisfied that this proposal has been processed in line with Government Policy.

Grounds of Appeal FAC138/22

Tarmon Sole Mates recently received funding to develop a walking hub around Scardan Waterfall, in conjunction with LCC.

Currently very few viewing points of Lough Allen from the walking/cycling route. Afforestation would block views in the area around Scardan Waterfall.

This appellant also submitted grounds relating to landslides, the CDP, tourism, and submits that two answers on the Pre-Approval Submission Report, to questions 4.1 and 4.2, are untrue.

DAFM Response to FAC138/22

Scardan waterfall is located approximately 900m away in Coillte Forest which is accessible to the public. This licence will have no impact on Scardan waterfall.

The licence area adjoins the upper mountain road area for approximately 165m with a 10m setback and native woodland planting.

The DAFM response is in line with responses to other appeals regarding landslides, tourism, landscape impacts, and the DAFM's role as competent authority regarding licencing of afforestation.

Grounds of Appeal FAC139/22

This appellant submitted the same 52-page report as the appellant in FAC137/2022. The DAFM's response, summarised previously in this letter, is the same for both appeals so will not be re-stated here.

Additional Submissions

Both FAC137/2022 & FAC139/2022 made additional submissions to the FAC in response to the DAFM's SoF. The submissions are identical but signed off by the two different appellants. The submissions have been considered in full and, in summary, contend the following:

- The DAFM's SoF is ambiguous and ignores community concerns. The appellant takes umbrage with the DAFM's approach to the mental health concerns raised in the grounds.
- Ignored the recommendations from LCC which align with the CDP.
- The slope of the site is incorrectly labelled as "Moderate" as this is a steep site. The site is likely between 15% and 17%. A site between 15% and 30% is classified as a steep site as per Table 1 from the Forestry and Water Quality Guidelines document.
- No slurry spreading or chemical management of rushes takes place or has ever taken place on these mountain pasture lands; the slopes are unsuitable for such machinery.
- The Department Inspector is not qualified to make such statements regards landslides. There is a major concern as highlighted in the appeal report and evidence on this site as per Fig 32.0 of the report. No Geotechnical expert input in considering potential effects.
- The topography of the site leaves afforestation in an exposed narrow elongated site with high winds prone to wind blow.
- An Ecologist should have been involved in EIA screening of the proposal.
- In the past, lands were planted in Leitrim and houses surrounded by forestry abandoned, resulting in a decline in rural population.
- The new Leitrim CDP came into effect from the 21/03/2023. The DAFM should consider its contents, including the Landscape Capacity Study for Commercial Forestry - County Leitrim (March 2022).
- Refers to Local Authority Waters Programme team desk-based study of the available data on the Lough Allen Priority Area of Action (PAA). Contends that "The Scientists have stated that Forestry is currently a significant pressure on the EPA Tarmo_010 river waterbody due to sediment loss from forestry activities". Highlights risk of sedimentation and nutrification from "forestry activities".

The DAFM provided a single response to both submissions:

- The Forestry Inspector apologised for the wording used in the DAFM's SoF in response to Point 1 and clarified that this was not intended to address mental health concerns raised.
- Leitrim CDP 2023-2029 had not been enacted at the point of approval. Only a small portion of the application lay within a "low" capacity area and did not fit Leitrim County Council's own definition of a low-capacity area. Its planting with native broadleaved species was deemed appropriate.
- Leitrim CDP 2023-2029 classifies the majority of the application area as "Valley Farmland" with a low sensitivity and a capacity to accommodate commercial forestry.
- The remainder of the licence area is classed as "Moorland Hills" with a high sensitivity and a limited capacity for commercial forestry. The study commissioned by LCC defines commercial forestry as conifer forests. The proposal is within an Areas of Outstanding Natural Beauty. This was considered and the nature and scale of the application as deemed appropriate and in keeping with the area.
- The the slope was assessed to have been predominantly moderate.
- The DAFM reiterated points regarding landslide risk and contended that no new drainage is planned and so there will be no hydrological impact on areas upstream.
- Native planting is not subject to windblow in the same way as shallow-rooting conifer plantations, which are established and managed using different methods.
- EIA screening was carried out for the application and the report is available.
- The application is for native woodland which will be invert mounded and pit planted, no new drainage is proposed. Establishment operations and future management interventions are likely to have little or no impact on sedimentation risk. No fertiliser is proposed and developing vegetation and water setbacks would help alleviate any overland flows.

Findings of the FAC

The remit of the FAC, as set out in Section 14B of the Agriculture Appeals Act 2001, as amended, is to consider appeals against certain decisions of the Minister for Agriculture, Food, and the Marine, and to determine if a serious or significant error, or a series of errors, was made in making the decision under appeal, and if the decision was made in compliance with fair procedures. The FAC noted that a number of references are made in some appeals to a previous licence decision and previous appeals submitted to the FAC. For the avoidance of doubt, this decision of the FAC relates only to the decision of the Minister to grant Afforestation Licence CN90896 on the 08/09/2022 and the subsequent six appeals against that decision. There are also issues raised in some grounds of appeal which are related to wider legislative or policy issues which are outside the remit of the FAC.

Some of the grounds submitted by various appellants are similar, overlapping, or identical. Where the FAC considered it efficient and appropriate to do so, these grounds have been grouped together and addressed under the headings below.

DAFM Environmental Screening

In the first instance, the FAC considered the DAFM's decision to grant CN90896 in light of the requirements of the EU Habitats and EIA Directives.

AA Screening

Article 6(3) of the Habitats Directive states that any plan or project not directly connected with or necessary to the management of a European site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to AA of its implications for the European site in view of the site's conservation objectives.

As outlined previously in this letter, the DAFM screened five European sites in the "likely zone of impact" of within 15km of the proposal and all sites were screened out with reasons provided. The FAC consulted the publicly-available EPA AA tool⁵ and found the same five European sites identified by the DAFM. The FAC noted the submission by the 2nd appellant (134/22) which contended that the screening conclusions for Boleybrack Mountain SAC and Cuilcagh - Anierin Uplands SAC are "ecologically and hydrologically illiterate". This appellant contends that there has been no consideration of upstream hydrological connection and also that the habitats of "the SAC" are vulnerable to impact from more than upstream hydrological activity. This appellant did not provide any further information as to the nature of the impacts referred to. The FAC noted that the Boleybrack Mountain SAC and Cuilcagh - Anierin Uplands SAC are separated from the proposal by approximately 8km and 6km respectively. The Qualifying Interests of both SAC's are all habitats and, based on the EPA-mapped watercourses reviewed by the FAC in considering these appeals, the upstream hydrological connections between the proposal and both SACs are interposed by the presence Lough Allen.

The FAC noted that the screen-out reason for Lough Arrow SPA does contain the basis for the DAFM's decision but considered that the DAFM's reasoning would have been made clearer by the inclusion of further information, elaborating on the screening conclusion.

Based on the information before it, the FAC concluded that the DAFM did not err in relation to the screening out of the five screened European sites on an individual basis.

The FAC considered the DAFM's AA In-Combination Report. The FAC noted that this document states "The potential for the proposed Afforestation project CN90896 to contribute to an in-combination impact on European sites was considered". The DAFM state that various online planning systems and datasets were consulted on the 06/09/2022 in order to identify other plans and projects, focusing on "the general vicinity of the project area in the River Sub-Basin Tarmo_010". The report records that the DAFM consulted the Department of Housing, Planning and Local Government's website and found three projects with planning permission granted across Leitrim and Roscommon County Councils in the last five years. The report states that the EPA and An Bord Pleanála websites were consulted, and no projects were identified. The report also states that the current (2015-2021) Leitrim County Development Plan was examined and lists the objectives relating to European Sites which were identified. The FAC noted that both the Tullynahaw Wind Farm and Drumkeerin Stone quarry are in separate River Sub-Basins to the proposal and considered that to be the reason why they were not included in the in-combination report, as raised by the 4th appellant.

The In-Combination Report concludes that "there is no likelihood of the proposed Afforestation project CN90896 itself, i.e. individually, having a significant effect on certain European Site(s) and associated Qualifying Interests / Special Conservation Interests and Conservation Objectives, as listed in the main body of this report. In light of that conclusion, there is no potential for the proposed project to contribute to any significant effect on those same European Site(s), when considered in-combination with other plans and project". The FAC considered that the phrasing of this conclusion constitutes a significant error in the DAFM's AA process as it demonstrates that the decision maker has not considered effects that might arise from the proposal which themselves may not be significant but

⁵ [EPA Maps](#)

which, in combination with other plans and projects, could result in a significant cumulative effect on a European site.

EIA Screening

The FAC considered the DAFM's screening of the proposal for EIA. The EIA Directive sets out, in Annex I, a list of projects for which EIA is mandatory. The Forestry Regulations 2017 (S.I. No. 191 of 2017) require that an *environmental impact assessment* is carried out in respect of an application for a licence for afforestation of an area ≥ 50 ha, the construction of a forest road of a length ≥ 2000 m, and any afforestation or forest road application 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 the afforestation of 17.79 ha, so is sub-threshold for mandatory EIA and the DAFM completed an assessment to determine the requirement for EIA before concluding that EIA was not required in this instance. The criteria to determine if a sub-threshold project should be subject to an EIA is set out in Schedule 3 of the Forestry Regulations 2017 and include the project's characteristics and the environmental sensitivity of geographical areas likely to be affected by the project.

The FAC considered the DAFM's *Assessment for EIA Requirement*. The FAC would understand that in submitting an application for an afforestation licence, an applicant must provide the information in Schedule 1 of the Forestry Regulations 2017. This includes a physical description of the whole project and its location; a description of the aspects of the environment likely to be significantly affected and a description of any likely significant effects on the environment from the expected residues, emissions, and waste where relevant and the use of natural resources, to the extent of the information available on such effects. The application recorded a number of responses to questions that relate to possible effects on the environment, some of which automatically require the submission of an additional report and further information on the nature of effects and measures to mitigate such effects. No such reports were initiated in this case. The FAC noted that the EIA assessment states that the description and characteristics of this afforestation project have been examined. The EIA assessment included the following categories: existing land use, cumulative effect and extent of project, water, soil, landscape, designated and non-designated habitats, and Public Participation and NGO participation.

The FAC found that in screening for EIA, the DAFM relied on Forest Service guidelines in relation to water quality, landscape, and archaeology but these guidelines have not been attached as conditions to the licence. Furthermore, licence Condition 2 requires adherence to the Environmental Requirements for Afforestation (ERA) and this document states that it replaces a suite of Forest Service guidelines, including those relating to water quality, landscape, and archaeology.

The FAC had regard to the grounds of appeal raised by the 2nd appellant in relation to the DAFM's EIA screening. Regarding High Nature Value Farmlands, this ground was submitted with reference to EU Regulation No 807/2014 (supplementing EU Regulation 1305/2013) on support for rural development by the European Agricultural Fund for Rural Development. These regulations were repealed by EU Regulation 2021/2115 which governs the rules that apply to Union support financed by the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development. The rules concerning the administration of grant-aid schemes are outside the remit of the FAC, as established under the Agriculture Appeals Act 2001, as amended.

In terms of hedgerow setbacks, the FAC noted that the licence conditions require the retention of all existing trees and hedgerows within the site. The conditions also require adherence to the ERA. As the licence was issued prior to the publishing of the *Environmental Requirements for Afforestation Working Document v.31Aug23*, the FAC considered that the ERA 2016 were the applicable requirements. The ERA does not require a minimum hedgerow setback but indicates that the setback distance should be informed by the quality of the hedgerow, amongst other factors. The FAC noted that the hedgerow setback was proposed by the applicant in the Bio Map submitted and was acceptable to the DAFM in this instance.

The FAC considered the ground of appeal which contends that there has been inadequate assessment of the impact of the proposal on species in Annex IV of the Habitats Directive. The FAC noted that the appellant has adduced no evidence as to the presence of Annex IV species in the area of the proposed afforestation, and that the lands in this case are agricultural in nature and the existing trees and hedgerows are required to be retained, and various setbacks/open space applied throughout the proposal. The FAC considered that the granting of the licence does not remove or supersede any other legal obligations on the Applicant or their agents. The FAC also note that the DAFM referred the application to the NPWS who stated they had no comment to make. However, in the particular circumstances of this case, given that there was no field inspection, and where the potential presence of Otter, in particular, but other protected species also, has been raised both in submissions on the application and in a response by a referral body, the FAC considered that the DAFM erred in not requiring an ecological assessment of the proposal prior to deciding to grant CN90896.

In addition to the above, the FAC found that the EIA assessment document only refers to other forestry projects in the section titled *Cumulative effect and extent of project*. The FAC understands that the "Assessment for EIA Requirement" document should be read as a summary document, and in combination with the record of the DAFM's decision as a whole, and that the In-Combination Report considered non-forestry plans and projects in the vicinity of the proposal. However, the EIA assessment does not expressly cross-reference the detailed record of other plans and projects contained in the In-Combination Report and the FAC considered this to be a significant error on the DAFM's behalf.

Water Quality

Numerous grounds of appeal raise issues relating to the potential for the proposal to impact water quality, aquatic species, and habitats, and the DAFM's assessment of same. In considering these grounds the FAC noted that the EPA National Soils layer indicates that a small portion at the uppermost end of the site (in the southwest) is blanket peat, but the vast majority of the proposal is underlain by mineral soils; Surface water Gleys, Ground water Gleys. The FAC noted, as raised by An Taisce's referral response, that the application states that the proposal is in an area sensitive for fisheries, but this is contradicted by the DAFM's EIA assessment document without any further information provided.

Appendix A of the licence states that the operational proposals that have been approved must be implemented in full as conditions of the afforestation licence. The approved operations are for the establishment of native species with no drainage works, the use of pit planting and inverted mounding, and no application of fertiliser or herbicide. 2000m of "stock-sheep" fencing was approved which the FAC considered would result in the protection of watercourses on-site from negative impacts associated with grazing animals. The licence conditions prescribe increased setbacks from watercourses on steeper parts of the site, and state that maintenance and access tracks at afforestation stage are to follow the site contours with minimum ground disturbance. The reason given is "in the interests of protection of the environment, in particular the protection of water quality and aquatic ecosystems". Additionally, adherence to the water protection measures in the ERA and the Forestry Standards Manual is also

required by the licence conditions. The FAC considered that the DAFM did not err in relation to the grounds concerned with water quality. As referenced previously in this letter, the proposal is in the TARMO_010 river waterbody which currently has 'Good' status, as assigned by the EPA, for the 2016-2021 period. It is the FAC's view that making a determination on the legality of the EPA's methodology for assessment of the Tarmo_010 river waterbody is outside the remit of the FAC.

Landscape, Views, Amenity

The FAC considered the grounds relating to the proposal's impact on the wider landscape, including those which reference the referral response from LCC. The FAC noted that LCC's response is in two parts. The Engineer's Report appears to relate to an application for "a forest access onto a public road" and does not make reference to native woodland afforestation. The Planning Section letter states that the proposal is within a High Visual Amenity Area as per the Leitrim CDP 2015-2021 and in terms of Forestry Capacity, traverses areas of both Medium and Low Capacity. The Planning Section letter refers to the more recent classification of the proposal lands as being within Landscape Character Type (LCT) 8 "Valley Farmland" as designated in the Capacity Study which informed the CDP 2023-2029. The FAC considered that the decision under appeal was made before the new Leitrim CDP 2023 - 2029 came into effect and so the FAC had regard to the forestry-related aspects of the Extended Leitrim CDP 2015-2021, which the FAC considered to be the relevant CDP. The FAC noted that this CDP states under *Forestry Strategy* (page 123-4) that "New woodland planting may be encouraged in; 1. Areas of marginal agricultural land on the fringes of the uplands below the 300m contour. These areas already have a distinctive wooded character, provided by strong hedgerows and natural woodland regeneration. They provide relatively good growing conditions for broadleaves. Such areas occur in all the northern glens and the lower hill slopes below the 300m contour line". The FAC noted that, the landscape capacity to accommodate forestry is recorded in *Figure 4.2: Landscape Capacity to Accommodate Forestry* and found that the proposal is predominately within an area of medium capacity with a section in the southwest in an area of low capacity.

The FAC understand that the proposal is within an Areas of Outstanding Natural Beauty and a High Visual Amenity Area. The FAC considered that the proposal is not for commercial coniferous forestry but native woodland establishment, which retains and incorporates existing trees, hedgerows, and scrub and based on a review of publicly-available mapping, is proposed for an area where the surrounding fields are delineated by mature hedgerows and (potentially naturally-regenerating) pockets of native woodland and in particular along nearby riparian zones. The proposal is wholly situated below the 300m contour line. Based on the information before it, the FAC concluded that the majority of the proposal could not be described as out of keeping with the surrounding landscape. However, the FAC concluded that, in the particular circumstances of this case, and on the balance of the evidence before it, including the open moorland character, the presence of blanket peat soils on sloping ground, and the proximity of this section of the proposal to the "Top Road", the area of the proposal which falls within the low capacity area to accommodate forestry should not have been approved for afforestation.

The FAC considered the grounds regarding negative impacts on tourism and views and considers that these are linked to the potential landscape impacts of the proposal. For the reasons outlined above regarding the size and nature of the proposal, the FAC considered that there is insufficient evidence that the proposal will have a negative impact on tourism or views in the area. The FAC reviewed the Amenity Map contained in the Leitrim CDP 2015-2021 and noted that, although the proposal is within an area of High Visual Amenity, the nearest mapped viewing point for "Outstanding Views and Prospects" appears to be "V21" which is located approximately 2km southeast of the proposal along the R280. The FAC also noted that Scardan Waterfall is situated within a block of mature coniferous forestry approximately 900m northwest along the public road from the southwestern end of the proposal and at a slightly

higher elevation and is satisfied that the proposed afforestation project would not negatively impact its amenity value. The FAC considered the same to be true for the the Southern Waterways Trail, which is protected by the licence conditions including by the prescription of a 10m setback from the paved edge of the public road to be adjoined by broken or “natural” edge planting.

Specific Grounds of Appeal

The FAC had regard to the grounds of appeal which were specific to each appellant and which have not been addressed in the preceding section.

FAC133/22

The FAC considered that a minimum dwelling setback of 60m applies in general and noted the DAFM’s SoF which contends that additional Bio area will result in an effective dwelling setback of c.100m in this case. However, the FAC observed that while there is a two-part Bio Map (dated 16/06/2022) on the FLV, and this map is annotated with markings that appear to relate to dwelling setbacks, the actual setback distance is not marked on the map and therefore it is not readily apparent to the FAC (or to members of the public) what setback from the adjacent dwelling house applies. The FAC observed that Regulation 5 (2) of the Forestry Regulations 2017 requires that (bolding added for the purposes of this letter):

(2) An application for a licence in respect of afforestation shall be accompanied by —

(a) an Ordnance Survey map or other map acceptable to the Minister, with the boundary of the land to which the application relates, and all internal plots, where applicable, delineated and shall clearly show the following details—

- (i) public roads,*
- (ii) forest roads,*
- (iii) aquatic zones,*
- (iv) wayleaves,*
- (v) archaeological sites or features,*
- (vi) hedgerows, and*
- (vii) any other features which may be relevant to the application,*

The FAC considered that, in the particular circumstances of this case, where such strong local opposition had been expressed in pre-approval submissions, and where proximity to adjacent housing was a feature of multiple submissions, the applicable dwelling setback constitutes relevant information and the failure of the Bio Map to show the details of the dwelling setback is a significant error in the application.

The FAC noted that, based on publicly-available imagery, the area between the appellant’s house and the proposal appears to be interspersed with mature hedgerows and groups of mature broadleaf trees. The FAC appreciates the appellant’s understandable concerns for their mother’s health. However, the FAC would understand that forest establishment works would not require the use of machinery which differs greatly to other, more common, agricultural practices. Regarding surrounding the appellant’s lands on three sides, the FAC considered that an applicant has a right to apply for an afforestation licence to plant their own land, subject to the ownership criteria set out in the relevant scheme documents. Regarding hydrological impacts, there is no convincing evidence before the FAC that the proposal would result in negative impacts on the hydrology of the area surrounding the proposal.

FAC134/22

The FAC considered the grounds regarding undue process in publishing the decision. The FAC noted that the licence was issued on the 08/09/2022 and that it was published on the FLV on this date. The DAFM's SoF states that "notice of decision to objector" was also issued on the 08/09/2022. The Licence decision was advertised on the Gov.ie website in the *Afforestation Decisions Report* on the 09/09/2022. The FAC does not consider that there was undue delay in the advertising of the decision as this occurred on what was effectively the next working day following the issue of the decision.

The FAC considered that the ERA provides a list of areas eligible to be claimed as ABE and concluded that the DAFM did not err in relation to approving the ABE areas submitted.

Regarding licence conditions, the FAC formed the view that the conditions attached to the licence are to be read, and adhered to, by the applicant and their registered forester/forestry company and that it is reasonable to expect a basic understanding of forestry operations, including those relevant standards and circulars that may be in effect. The FAC considered the operational details in Appendix A to be sufficiently clear. The FAC noted that the scrub area referred to in the licence conditions is that area recorded as scrub in the Bio Map on the FLV. Based on the information before it, the FAC is not satisfied that a serious or significant error was made in the granting of the licence in relation to the licence conditions.

The FAC considers that Woody Weed Removal is a standard operation in forestry management and is not satisfied that the DAFM erred regarding this ground of appeal.

The FAC agreed with the 2nd appellant, for reasons set out previously in this letter, that in the particular circumstances of this case, the application should have been referred for ecological assessment.

FAC137/2022

The FAC had regard to the grounds of appeal related to landslide susceptibility. The FAC consulted the publicly-available Landslide susceptibility mapping produced by the GSI⁶ and noted that the majority of the proposal appears to be within an area classified as low risk with a few small pockets classified as moderately low. The FAC noted that the 4th appellant's grounds seem to infer that drainage works will take place on the site and increase the risk of landslide whereas there are no drainage works proposed. The FAC also noted that the proposal is underlain almost entirely by mineral soil as opposed to peat soils which were present in the examples cited by the appellant in their grounds. The FAC considered that the appellant did not produce convincing evidence to support this ground of appeal.

In terms of wind risk, the FAC would understand that the risk of windblow/wind-snap associated with native woodland, composed primarily of broadleaved species would be considerably less than that of commercial conifer plantations, largely due to the deeper rooting structure of the broadleaf species and less intensive management interventions.

The FAC noted that the site access is described as adequate in the Site Details Report on the FLV and would consider that planting setbacks would not prevent forestry operations staff and machinery traversing the site.

Regarding consultation, the FAC noted that Table 19.2 of the Forestry Standards Manual 2015 states Applicants "should liaise with the owners of neighbouring properties to resolve in advance any potential concerns" and considers that, although this is not a requirement, in the particular circumstances of this case it may have been beneficial if the Applicant had done so.

Conclusion

⁶ [Landslide Susceptibility Map \(arcgis.com\)](https://www.arcgis.com)

Based on the evidence before it, as outlined above, the FAC found that the DAFM made a series of errors, some of which were significant, in their processing of the application prior to issuing CN90896. In the particular circumstances of this case, the FAC decided to set aside the decision of the Minister in relation to licence CN90896 and finds that any consideration of afforestation of the site in future should be on foot of a new application, which would need to include a Bio Map which meets the requirements the Forestry Regulations 2017, if such an application is submitted.

Yours sincerely,



Luke Sweetman on behalf of the Forestry Appeals Committee