



24<sup>th</sup> May 2024

**Subject:** Appeal FAC 056/2023 against licence decision LS13-FL0079

Dear

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

#### **Hearing and Decision**

A hearing of appeal FAC 056/2023 was held remotely by the FAC on 17/04/2024. In attendance:

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

Having regard to the particular circumstances of the appeal, the FAC considered that it was not necessary to conduct an oral hearing in order to properly and fairly determine the appeal. Having regard to the evidence before it, including the record of the decision, the notice of appeal, and submissions received, the Forestry Appeals Committee (FAC) has decided to set aside and remit the decision of the Minister for Agriculture, Food and the Marine to grant licence LS13-FL0079. The reasons for this decision are set out hereunder.

#### **Background**

The application for the licence under appeal relates to the granting of a felling licence at Crubeen, Cullenagh, Co. Laois. The application as submitted is dated 24/03/2023. The application included operational and environmental information and maps outlining the licence area and operational and environmental features. The operations would involve the clearfelling in 2025 of an existing plantation area of 7.37 ha in a single plot comprising 79% Sitka spruce, 20% Japanese Larch and 1% Beech planted (some) in 1944 and the balance in 1998. The felling age of the Sitka spruce and Japanese larch is described as being 27 years in 2025. The site would be replanted with 85% Sitka spruce, 10% Hybrid Larch and 5% being Open Space. The licence was granted with conditions on 21/09/2023.

## **Appropriate Assessment Pre-Screening Report (Applicant's)**

The FAC finds on file a document entitled Appropriate Assessment Pre-Screening Report, dated 22/06/2023. This report which is marked as being for Clearfell and Reforestation project LS13-FL0079, located in the vicinity of Boolyrathornan and Boolyvannanan, Co. Laois, describes the site, including hydrology, and operations in further detail and screens the proposal for potential significant effects on European sites. This document describes the proposal site as being entirely of plantation conifer high forest. The project area is described as being one sub-compartment comprising Sitka spruce, and to a lesser extent Japanese Larch and Beech planted in 1944 and 1998, forming a closed canopy over the entire project area.

A relevant watercourse is said to flow along the south-western boundary of the project area in a north-westerly direction and discharges into an aquatic zone, the Triogue River (order 1), which is located approximately 340 metres north-west from the project area. The report states that the project area is part of a larger mixed conifer and broadleaf plantation of varying age and class to the south, east, and north-east. Agricultural grassland is said to be present along the north-western, western, and south-western boundaries. The surrounding area and wider landscape is described as supporting agricultural grassland with pockets of conifer plantations, mixed broadleaf woodland and cutover peatland. It is also described as being located on mineral soils (AminSW and AminSP), on a steep slope, and sloping in a north-westerly direction. The report states that there are five Natura 2000 sites located within 15km of the project area:

- Ballyprior Grassland SAC (IE002256)
- Lisbigney Bog SAC (IE000869)
- River Barrow and River Nore SAC (IE002162)
- River Nore SPA (IE004233)
- Slieve Bloom Mountains SPA (IE004160)

The project area is described as being accessible via the existing forest road LS13R0002 which runs along the northern boundary and connects into the forest road LS13R0001 to the east. The forest road LS13R0008, it states, runs along the southern boundary of the project area and the forest road LS13R0906 runs along the south-eastern boundary, providing additional access.

The report states that all European Sites within a distance of 15km surrounding the project area were identified and considered in relation to hydrological pathways for likely significant effect. In this case, it states that there is one hydrologically connected European site within 15km of the project area that being the River Barrow and River Nore SAC (Site Code: IE002162) at a distance of approximately 23.3km (the FAC understands this to be a measurement of hydrological pathway distance) from the said European site. It also states that the potential for likely significant effect on European Sites at distances greater than 15km via hydrological pathways was also considered and that in this case, there are no hydrologically connected European Sites beyond 15km.

It states that work on this project site will comprise of Clear-felling, followed by Reforestation (i.e. replanting of trees) of the area for timber production. The area is to be re-established by windrow and mounding and then planted. No fertiliser application is required to promote the establishment and growth of newly planted trees. Each qualifying interest or special conservation interest is considered in turn for the five European sites identified. The report also identified other plans and projects considered in combination with the proposal. The pre-screening determines that Appropriate Assessment should be undertaken in relation to specified interests of one European Site, River Barrow and River Nore SAC (IE002162).

### **NIS (Applicants) 22/06/2023**

The applicant also submitted a Natura Impact Statement for Clearfell and Reforestation project LS13-FL0079, located in the vicinity of Boolyrathornan and Boolyvannanan, Co. Laois. At page 4 of the NIS in Section 1 it states that *'The purpose of this Natura Impact Statement is to provide supporting information to assist the competent authority, in this case the Forest Service DAFM, to conduct an Article 6(3) Appropriate Assessment of a clearfell and reforestation project, located at Boolyrathornan and Boolyvannanan, Co. Laois. This report forms part of the supporting documentation for a forestry licence application in conjunction with a pre-screening report'*. Potential significant effects are outlined in relation to the interests identified in the pre-screening document and measures are outlined. The NIS at pages 5 and 6 provide details of its authors and their qualifications. The correct location of the project does not appear to be mentioned in either the Applicant's screening document or the NIS.

### **DAFM Appropriate Assessment screening Report & Determination (AASRD)**

An AA screening Report & Determination dated 14/09/2023 is to be found on file as prepared for the Department of Agriculture, Food and the Marine on behalf of the Minister. This report is marked as having been reviewed by a DAFM Ecologist on 19/09/2023. This screening report refers to *'Felling and Reforestation project LS13-FL0079, at Crubeen, Cullenagh, Co. Laois'* and records considerations of the same five European sites as identified in the Applicant's pre-screening report. The AASRD considers each site in turn and records screening conclusions and reasons. Other plans and projects considered in combination with the proposal are recorded. The screening document concludes that an AA was required in relation to one European Site namely River Barrow and River Nore SAC IE0002162.

However, on review by the DAFM Ecologist the screening conclusion of the Inspector to screen in the River Barrow and River Nore SAC IE0002162 was overturned. The reason stated for overturning the initial screening conclusion, as provided in Appendix C, is; *'This SAC is located approximately 23.3 km downstream of the project area. The project area and the SAC are connected via relevant watercourses, streams and rivers of varying orders. The hydrological pathway exhibits a meandering nature and passes through a topography of pastoral fields and the town of Portlaoise prior to entering the SAC. Given the significant intervening distance, the flat topography, the meandering nature of the hydrological*

*connection and the scale and nature of works, no significant effects are envisaged. Forest Service Standards will ensure that there is no impact on the local water environment'.*

The AASRD separately records that the River Barrow and River Nore SAC IE0002162 is 5.5 km south southeast of the project area. This report references an 'Appendix A: In-Combination Report for Felling and Reforestation proposed under LS13-FL0079' with the commentary 'See File'. The FAC finds that the date appearing on this appendix is 14/09/2023.

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

A separate AA Determination for Felling and Reforestation project LS13-FL0079, at Crubeen, Cullenagh, Co. Laois, (marked as prepared by an ecologist on behalf of the Minister for Agriculture, Food and the Marine Date: 19/09/2023), states that it took into account:

- the initial application, including all information submitted by the applicant, information available via Iforis (including its GIS MapViewer) and input from the District Inspector (including information following field inspection);
- responses from consultation bodies and submissions from 3rd parties;
- any subsequent supporting documentation received from the applicant;
- any other plan or project that may, in combination with the plan or project under consideration, significantly affect a European Site;
- any information or advice obtained by the Minister;
- the AA Screening Report and Determination for this project, which is evidence of the required evaluation of any potential significant effects that may arise as a result of the proposed project on European Sites (at no stage during the screening process were measures intended to avoid or reduce any potential effects to European sites considered);
- any Natura Impact Statement provided by the applicant on foot of a request by the Minister, or otherwise.
- any supplementary information furnished in relation to any such report or statement;
- Conservation Objectives, Natura 2000 forms, site synopsis and supporting documents for each relevant European site, available from National Parks & Wildlife Service ([www.npws.ie](http://www.npws.ie));
- available ecological and environmental information including aerial imagery, historical OS maps, DAFMs iFORIS system, QGIS and ArcGIS applications and data available at National Parks & Wildlife Service (npws.ie), EPA Maps, GeoHive, Data and maps (gsi.ie), Biodiversity Maps (biodiversityireland.ie);
- any other relevant information.

It also states that:

*'Further to the receipt or preparation of additional information in relation to this application (in the form of a Natura Impact Statement (NIS)), and a decision pursuant to S.I. No. 293 of 2021 (as amended) and Regulation 10(4) of the Forestry Regulations 2017 (S.I. No. 191 of 2017)(as amended) to publish a formal notice of the same, there was a 30-day public consultation period to allow for submissions or observations*

*in writing concerning the application. This 30-day period is now closed and submissions received have been considered prior to the completion of this AAD'.*

The AA Determination states in conclusion that:

*'The Minister has examined the potential impacts on the likely significant effects of the activity / project on those European sites 'screened ' (as listed above) and has made certain, based on best scientific knowledge in the field and the European Communities (Birds & Natural Habitats) Regulations 2011 (as amended) and the Forestry Regulations 2017, as amended, and Article 6(3) of the Habitats Directive, that the project proposed under LS13-FL0079, 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. Therefore, no action is required.*

*Therefore, the Minister for Agriculture, Food & the Marine has determined, pursuant to Regulation 42(16) of the European Communities (Birds and Natural Habitats) Regulations 2011 (as amended) and Regulation 19(5) of the Forestry Regulations 2017 (as amended), based on objective information, that no reasonable scientific doubt remains as to the absence of any adverse effect on the integrity of any European site'.*

#### **DAFM In-Combination Assessment dated 14/09/2023**

There is on file an In-combination report marked as 'Appropriate Assessment Screening Report Appendix A: In-combination report for Felling and Reforestation project LS13-FL0079' dated 14/09/2023. It states that:

*'It is concluded that there is no likelihood of the proposed Felling and Reforestation project LS13-FL0079 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'.*

## **Referrals**

The application was referred to Laois County Council on 12/04/2023 and described the project as being at Crubeen, Cullenagh, Co Laois. The Local Authority responded on 02/05/2023 submitting that the proposal was not within an Architectural/Archaeological Site or Prime Scenic Area nor is it within an SPA or SAC.

## **Appeal**

One third party appeal was made against the decision to grant the licence. The Notice of Appeal and full grounds of appeal were provided to all the parties. In summary, the grounds submitted that the FSC (sic) must assess this proposed development De Novo, under the EIA Directive and the Habitats Directive as well as the Water Framework Directive and attaches references to case Law. The grounds also contend that the FAC must carry out a screening for Appropriate Assessment and contends that it cannot rely on the screening carried out by the FS. The grounds also contend that cumulative assessment cannot in law be limited to five or three years and makes a reference the location of the River Barrow and River Nore SAC relative to the project area.

## **Minister's statement (SOF)**

The Minister provided a statement responding to the appeal which was provided to the parties. This statement outlined the processing of the application and the issuing of the licence. The statement submits that in relation to EIA that it is the position of the Department that clear-felling and replanting of an already established plantation forest is a standard operational activity and does not involve an activity or project that falls within the specified categories of forestry activities or projects subject to the requirements of the EIA Directive, as transposed and set out nationally in Schedule 5 Part 2 of the Planning and Development Regulations 2001, as amended, and in Regulation 13(2) of the Forestry Regulations 2017 (and wherein relevant national mandatory thresholds and criteria for EIA are also prescribed).

In relation to the Department's AA process, timing of the mitigations and lacunae, the SOF sets out the order in which the Department carries out its AA screening and AA process. It highlights that mitigation only come into the decision-making process as part of AA Stage II and is not taken into account at screening. It also states that if the Department approves the licence, a 14-day stay on operations commencing applies to allow any party to appeal the decision of the Minister. It also sets out that when the licence is issued it is also issued to any person who made a submission, with any further documentation on hand in relation to the licence (that is material used to support the decision) and the submitters are provided with an opportunity to appeal to the Forestry Appeals Committee (FAC). The SOF asserts that the process as outlined demonstrates that there is no gap in the Departments Appropriate Assessment of this licence application.

In relation to Hen Harrier the SOF sets out that the Slieve Bloom Mountains SPA is 13.9 km northwest from LS13-FL0079 and was screened out as it was determined in the AA Screening Determination that the

project will not adversely affect the integrity of this European site. Specific procedures, it states, apply to Hen Harrier in relation to SPAs designated for breeding Hen Harriers. These procedures, agreed with the NPWS and described in the 2015 publication 'Hen Harrier Conservation and the Forestry Sector in Ireland', focus on disturbance operations within so-called 'Red Areas' during the Hen Harrier breeding season, 1<sup>st</sup> March to 15<sup>th</sup> August, inclusive and that red areas are 1.2 km radius areas centred on known Hen Harrier nesting areas. It states that this European site was screened out for Hen Harrier because the project did not fall within the SPA and therefore did not fall inside a Red Area as designated by the NPWS. It also states that new 'Red Areas' may be generated from time-to-time, as new Hen Harrier nesting sites are identified, either individually or as a result of a regional or national survey. The SOF sets out that the application for LS13-FL0079 was advertised and uploaded to the Departments Forest Licence Viewer and that members of the public had 30 days to make a submission. The SOF further states that the application was also referred to the Local Authority and that the Department did not receive any information in connection with breeding pairs of Hen harrier and proceeded to screen the licence application out. The SOF states that LS13-FL0079 was screened in and therefore the issue raised concerning the Departments rationale for screening out 'developments' is irrelevant in respect of this licence application. The SOF also states that the Grounds for Appeal refers erroneously to LS09-FL0189 and that River Barrow and River Nore SAC is 5.5km south of the project area and not 23.3km.

### **Considerations of the FAC**

The grounds submit that the FSC (sic) must assess the development "de novo" under the EIA Directive, Habitats Directive and the Water Framework Directive and elsewhere state that the FAC must carry out a screening for Appropriate Assessment asserting that it cannot rely on the screening carried out by the Forest Service. The FAC understand this reference to "de novo" to relate to the form of appeals process established under the Agriculture Appeals Act 2001 in relation to certain decisions of the Minister. The 2001 Act does not establish a de novo appeals system in the first instance and the FAC does not agree that it must address the proposal "de novo".

The FAC had regard to the documentation provided through the DAFM's Forestry Licence Viewer (FLV) as notified to the parties, the notice of appeal and the statement provided by the DAFM. In relation to Appropriate Assessment the documents included a pre-screening report and Natura Impact Statement submitted by the Applicant in addition to other application information, and an Appropriate Assessment Screening & Determination (AASRD) and a document named as an Appropriate Assessment Determination (AAD) both prepared on behalf of the Minister. Also on file is an In-Combination Assessment document prepared on behalf of the Minister. The assessment dated 14/09/2023 appears to be an appendix to the DAFM AASRD.

From the procedure adopted in relation to the processing of this application it appears that the NIS was prepared before the screening was undertaken by the Minister. Having regard to the Forestry Regulations 2017, the FAC considers that this may be acceptable in practice where there is a clear consistency in the reasoning in the assessment undertaken by the Minister with that in the NIS or that any significant inconsistencies are explained and where the assessment and conclusions are clear, definitive and

complete. While in this instance the FAC is of the view that there is contradictory information within the pre-screening and NIS submitted by the applicant and the AASRD and assessment undertaken by the Minister arising from the incorrect address being cited in the applicants documents, this is not in itself fatal to the process in the case of this application as the Ministers documents demonstrate that the proposal was screened out and did not proceed to Appropriate Assessment. There is however confusion evident on the face of the record available to the FAC, as notwithstanding the screening out of the project in the review of the initial screening carried out on behalf of the Minister, the FAC finds on file a document titled Appropriate Assessment Determination which is dated 19/09/2023. This is addressed further below.

The FAC finds that the Appropriate Assessment Screening carried out on behalf of the Minister (AASRD) dated 14/09/2023 for *'Felling and Reforestation project LS13-FL0079, at Crubeen, Cullenagh, Co. Laois'* records consideration of the same five European sites as identified in the Applicant pre-screening report and concludes that an Appropriate Assessment was required in relation to one European Site namely River Barrow and River Nore SAC IE0002162. The FAC also finds that on review by the DAFM Ecologist the screening conclusion of the Inspector to screen in the River Barrow and River Nore SAC IE0002162 was overturned and that the reason stated for overturning the initial screening conclusion is; *'This SAC is located approximately 23.3 km downstream of the project area. The project area and the SAC are connected via relevant watercourses, streams and rivers of varying orders. The hydrological pathway exhibits a meandering nature and passes through a topography of pastoral fields and the town of Portlaoise prior to entering the SAC. Given the significant intervening distance, the flat topography, the meandering nature of the hydrological connection and the scale and nature of works, no significant effects are envisaged. Forest Service Standards will ensure that there is no impact on the local water environment'*. There is some ambiguity in the description of the SAC as being located approximately 23.3 km downstream of the project area having regard to the straight-line distance between the project area and the SAC being of the order of 5.5km. The FAC however believes that the use of words such being connected via relevant water courses etc and the reference to the meandering nature of the hydrological connection make it clear that the 23.3km refers to a hydrological pathway distance.

Nonetheless the FAC finds no reasoning on the face of the record as to why what appears to be a standard form of Appropriate Assessment Determination Report was carried out subsequently in respect of a proposal that on review had been deemed to be screened out. Having regard to the Forestry Regulations 2017 it would appear that the Minister is to undertake an Appropriate Assessment where they have concluded that a development is likely to have a significant effect on a European site or where the Minister is unable to determine the likely effects of a development.

The FAC finds on file an In-combination report marked as *'Appropriate Assessment Screening Report Appendix A: In-combination report for Felling and Reforestation project LS13-FL0079'* dated 14/09/2023 on file. It states that:

*'It is concluded that there is no likelihood of the proposed Felling and Reforestation project LS13-FL0079 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'.*

Based on the above wording as quoted from the In-Combination report it is clear that the report has taken into consideration the potential for significant effects on the four screened out sites while stating that the European Site that has not been screened out in this screening exercise, will be progressed to, and addressed in, Stage 2 Appropriate Assessment.

The FAC also finds that the review by the Ecologist on behalf of the Minister, which led to the overturning of the initial conclusion to screen in a site is dated 19/09/2023 and is marked as Appendix C to the report of the inspector's screening which bears the date 14/09/2023. The FAC having examined these records concluded that it is an error to have an Appendix to a Report which postdates the said report on the basis that the Appendix (C) could not have existed at the date (14.09.2024) the report was signed off. The FAC also concluded, based on the face of the record available to it, that there is no evidence that potential In-Combination effects of the proposal in combination with other plans and projects was considered for the European Site (River Barrow and River Nore SAC IE0002162) that was screened in as per the inspector's screening as the project did not ultimately proceed to stage 2 assessment. The FAC considered this to be a significant error in the processing of the application in so far as Appropriate Assessment is concerned.

The FAC noted that the reasons provided for the screening out of River Barrow and River Nore SAC stated that *Forest Service Standards will ensure that there is no impact on the local water environment*. As this is stated in the context of an Appropriate Assessment screening it is unclear whether it is meant as a general comment on environmental impacts or that the Minister has relied on mitigation measures to screen out the site. It is established that a competent authority cannot rely on such measures at the screening stage. This is further compounded by the reference to *residual effects* in the in-combination section. 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.*

The NIS submitted by the Applicant also uses the word residual in the context of considering any risks after the assessment of the effectiveness of measures. 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.

In relation to the Water Framework Directive (WFD), it has been established that an authority is required to refuse authorisation for an individual project where it may cause a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by the directive. The grounds do not allege that this the proposal could have such an effect but make a general reference to the requirements of the WFD. The Minister did identify the waterbodies in the general area of the proposal. The data laid out in page 5 of the screening document lists the code and name of each body. The FAC finds that the status considered for the waterbody BALLYROAN\_010 is that of the period 2013-2018 while the EPA provides more recent figures for 2016-2021. It would appear to the FAC that the most appropriate status to consider is the most recent to the licence under consideration and that this constituted a serious error.

The licence does include a number of conditions that relate to the protection of the local environment, including adherence with a number of published standards and guidelines developed by the DAFM. The FAC noted that the wording of some of these documents appeared with errors. There is a reference to "forestry biodiversity" whereas the FAC would understand this should be Forest Biodiversity Guidelines. The FAC would consider that such documents should be clearly identified, ideally with the associated date to avoid any confusion, and readily available. However, the FAC considers this to be a minor error as these documents are, in general, well recognised in practice. Of more significance is the absence of the requirement for full compliance with the Standards for Felling and Reforestation (DAFM, 2019). These standards state, *'This document sets out the universal standards that apply to all felling (thinning, clearfelling) and reforestation projects on all sites throughout Ireland, undertaken under a felling licence issued by the Department of Agriculture, Food & the Marine under the Forestry Regulations 2017 (S.I.191 of 2017). (Pg 1)'*.

The FAC understand this to be a policy statement and that it is the adopted policy of the Minister for Agriculture, Food and the Marine to condition adherence with these standards on felling licences unless there was a stated reason otherwise. In addition, the Forestry Regulations 2017 require the Minister to have regard to such standards in making licencing decisions. The FAC considers that, notwithstanding the references in conditions 13, 15 and 22 requiring the compliance with aspects of the said Standards, the

failure to include full compliance with these standards as a condition on the licence represents a serious error.

The grounds contend that the consideration of cumulative effects cannot be limited to five or three years by law but does not identify any plans or projects which they consider should have been considered but were not. The grounds also do not suggest how the proposal may have a significant effect on a European site. The Minister does not contest the submission from the Appellant. The in-combination report specifies only plans and projects from the previous five years and this was relied on in the screening. Neither this report nor the statement provides an explanation as to why this limit was adopted. The FAC considers that the adoption of a set limit in this manner, without stated reasons, is not appropriate as there may be plans or projects that pre-date this limit which are having an effect on a European site. Advices published by the Department of the Environment (Appropriate Assessment of Plans and Projects in Ireland Guidance for Planning Authorities) and the Office of Planning Regulator (OPR Practice Note PN01 - Appropriate Assessment Screening for Development Management) state that decision makers should consider plans and projects that are completed, permitted and proposed. In relation to some licenced activities they may not be exercised until after a five year period, for example a 10 year tree felling licence, or may have been licenced/permitted prior to 5 years but are having an ongoing effect on a European site. However, whether the proposal could have a significant effect in-combination with plans and projects would depend on its capacity to have an effect on a European site, in addition to any effects arising from other plans or projects. Ultimately the FAC was satisfied that there are a series of errors on the record of the Appropriate Assessment screening of the proposal such that it should be undertaken again with these errors addressed on the record.

The grounds make reference to the EU EIA Directive (Directive 2011/92/EU as amended by Directive 2014/52/EU). The FAC considered that the EU EIA Directive sets out in Annex I a list of projects for which EIA is mandatory. Annex II contains a list of projects for which member states must determine, through thresholds or on a case by case basis (or both), whether or not EIA is required. Neither afforestation nor deforestation is referred to in Annex I. Annex II contains a class of project specified as "initial afforestation and deforestation for the purpose of conversion to another type of land use" (Class 1 (d) of Annex II) and "Any change or extension of projects listed in Annex I or this Annex, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment." (Class 13 (a) of Annex II). The Irish Forestry Regulations 2017, in relation to forestry licence applications, require the compliance with the EIA process for applications relating to afforestation involving an area of more than 50 hectares, the construction of a forest road of a length greater than 2000 metres and any afforestation or forest road below the specified parameters where the Minister considers such development would be likely to have significant effects on the environment. The decision before the FAC relates to the felling of 7.37 ha of commercial managed forest which would be replanted, and no change of land use would occur. The FAC concluded that the felling of trees, as part of a forestry operation with no change in land use, does not fall within the classes referred to in the Directive, and is not covered by national regulations and that screening for significant effects under the EIA Directive was not required in this case.

The FAC is satisfied that serious errors were made in the making of decision LS13-FL0079 and considered that the Minister should undertake a new screening for Appropriate Assessment and, if required, should request a new NIS or prepare an Appropriate Assessment Report that identifies and assesses likely significant effects on European sites, of the proposal itself and in-combination with other plans and projects, and, where they occur, mitigation measures and an assessment as to whether the proposal would impact on the integrity of a European site. The Minister should also address the errors in relation to the WFD data, and the failure to attach the conditions required by adopted policies before a new decision is made on the application.

Yours sincerely,

  
Seamus Neely,

On Behalf of the Forestry Appeals Committee