



27<sup>th</sup> November 2024

**Subject:** Appeal FAC 064/2024 against licence decision CN86043

Dear

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

#### **Hearing and Decision**

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. A hearing of appeal FAC 064/2024 was held remotely by the FAC on 20<sup>th</sup> November 2024. In attendance:

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

Secretary to the FAC: Ms. Aedin Doran.

Having regard to the evidence before it, including the record of the decision, the notices 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 the licence CN86043. The reasons for this decision are set out hereunder.

#### **Background**

The licence decision relates to the afforestation of 7.67 hectares at Ballygrany, Co. Galway. The approval also provides for 165m of fencing. The application is recorded as having been submitted 28<sup>th</sup> February 2020 and advertised on 13<sup>th</sup> March 2020. This licence (CN86043) has been the subject of a previous appeal (FAC 054/2022) and the decision of the FAC in relation to that appeal was to set aside and remit the decision to the Minister to refer the application to the National Parks and Wildlife Service (NPWS) and to undertake a new screening for Environmental Impact Assessment in line with the requirements of the

Forestry Regulations 2017 and the EU EIA Directive in advance of making a new decision on the application.

The proposal constitutes 7.67 Ha. of afforestation in five Plots. The Plot numbering used is as per the applicant's revised Biomap dated 13<sup>th</sup> August 2021. The site is located in the townland of Ballygrany, Co. Galway. The proposal is made up of two distinct blocks with Plots 1, 2 and 3 being accessed from local road L-3116 and Plots 4 & 5 are accessed off local road L-3407. Plots 4 and 5 are separated by a powerline corridor from Plots 1, 2 and 3. Plot 3 fronts onto the public road opposite a number of dwellings including the address of the appellant. The site description given is that the site soils are predominantly podzolic in nature. The slope across the site is predominantly flat to moderate (<15%). The vegetation on site is described as grass and rush. The site is said to be crossed by/adjoin an aquatic zone(s).

The Statement of Fact (SOF) as submitted to the FAC by DAFM sets out that seven submissions were received in relation to the application variously on 15<sup>th</sup> March, 19<sup>th</sup> March, 23<sup>rd</sup> March, 28<sup>th</sup> March, 31<sup>st</sup> March, 7<sup>th</sup> April and 16<sup>th</sup> April 2020. These submissions all predate the earlier decision by the DAFM to issue the licence CN86043.

The application had been referred to the Galway County Council prior to the previous decision which was set aside and remitted by the FAC. The application was referred to the NPWS on the 27<sup>th</sup> July 2023 as per the requirements of the previous FAC decision. The NPWS response was dated the 24<sup>th</sup> August 2023 and included that:

- The proposed afforestation application is located in the townland of Ballygrany, Ballymacward, Ballinasloe, Co. Galway.
- The development is made of five plots totalling 7.68ha.
- The proposed development does not lie within a designated area. A water channel within the development site flows into the Glennamucka Stream catchment which flows into the Killaclougher River part of Lough Corrib Special Area of Conservation (SAC). The development site has a hydrological connection to Lough Corrib SAC approximately 2.7km downstream.
- This application is an appeal referral after a third party appeal was submitted. This application originally was not referred to this Department due to an error in the Forestry Service referral system.
- A revised Appropriate Assessment Screening Report and Appropriate Assessment (Natura Impact Statement) (March 2022) and an Ecological Report has been prepared by the Forestry Service Ecologists.
- The forestry appeals board (FAC) has requested for a new Environmental Impact Assessment Report screening be undertaken due to errors in the original assessment. A third party submission has raised several concerns from the applicant which include a report of Corn Crane (Crex crex) in the general area.
- A review of several databases for records of Corn Crane (Crex crex) was undertaken. There are no recent records of Corn Crane from this locality, the last confirmed record in this area is from the first national bird atlas (1968-1972).

- The Forestry Service and FAC must be satisfied that the proposed afforestation application does not pose a significant effect on qualifying interest species, habitats and to the water quality of Lough Corrib SAC.
- In the event that the application is permitted all Mitigation Measures as outlined in Chapter 3 of the revised Appropriate Assessment (dated 16/03/2022) and Chapter 4 of the Ecological Report be fully adhered too and a condition of the licence.

The submission also included an appendix containing more general points that might be of relevance and for assistance to DAFM in its consideration of the application.

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

The DAFM, in keeping with the requirements of the previous FAC decision relating to this licence, carried out an Assessment to Determine EIA Requirement based on an inspection certified on 12<sup>th</sup> June 2024 in advance of making the decision to grant the licence subject of this appeal. In this assessment the Inspector recorded a consideration of the application across a range of criteria relevant to the proposed afforestation, including water, soil, designated areas, HNVf, landscape, amenity and recreation, Transfrontier, and cumulative effects, and determined that the project was not required to undergo EIA.

#### **Appropriate Assessment Screening Report & Determination**

There is an Appropriate Assessment Screening Report (AASRD) dated 12<sup>th</sup> February 2024 on file as carried out by a DAFM Ecologist. It examines six European sites and screens in Lough Corrib SAC IE0000297. The reasons are provided for the screening out of the other five European Sites examined. The AASRD also references an 'Appendix A: In-Combination Report for Afforestation proposed under CN86043'

#### **Appropriate Assessment Screening Report - Appendix A: In-combination report for Afforestation project CN86043**

There is an In-Combination Assessment for the screened out European sites on file which is itself undated. It includes the following statement.

*'It is concluded that there is no likelihood of the proposed Afforestation project CN86043, when considered individually, having a significant effect on the relevant European Site(s), as described elsewhere in the Screening Report. There is no likelihood of residual effects that might arise from this project, which are not significant in themselves, creating a significant effect in-combination with other plans and projects. The relevant Qualifying Interests / Special Conservation Interests and Conservation Objectives, as listed elsewhere in the Screening Report, have been taken into consideration in reaching these conclusions.*

*Furthermore, it is considered that the regulatory systems in place for the approval, operation (including any permitted emissions) and monitoring of the effects of other plans and projects are such that they will ensure that they do not have any significant effect on those same European Site(s). There is no likelihood*

*that the proposed project will have, or contribute to, any significant effect on those same European Site(s), when considered in combination with other plans and projects. Note that those European Site(s) upon which, a likelihood of a significant effect arises when considering the project individually, are screened in and will be progressed to, and addressed in, Stage 2 Appropriate Assessment.'*

#### **Appropriate Assessment Report**

There is an Appropriate Assessment Report (AAR) dated 15<sup>th</sup> February 2024 on file which in Section 4 sets out the mitigation measures required in the case of the proposal. It concludes that the proposed Afforestation project under CN86043, with mitigation measures identified, will itself (i.e. individually) not result in any adverse effect or residual adverse effects on the integrity of the European site(s) listed elsewhere in the report. It also states that the project was considered in combination with other plans and projects in the area that could result in potential significant cumulative effects on these European site(s) and that no potential significant cumulative effects are predicted with the plans and projects as listed in the Appendix A to the report.

It goes on to state that therefore, it is deemed that this project, when considered in combination with other plans and projects, will not give rise to any adverse effect on the integrity of any European Site and that this relates to the proposed activities under this project only. It states that any subsequent forestry-related activity requiring consent/grant aid shall be subjected to the DAFM Appropriate Assessment Procedure, including an in-combination assessment with the current proposal, prior to any future consent being granted.

#### **Appropriate Assessment Report - Appendix A: In-combination report for Afforestation project CN86043**

There is on file an In-Combination assessment for the screened in European site which is itself undated. It contains an In-Combination Statement relating to the screened in European site.

#### **Ecology Report**

There is on file an Ecology report dated 12<sup>th</sup> April 2024 relating to the proposal.

#### **Appropriate Assessment Screening Report & Determination**

There is a further Appropriate Assessment Screening Report (AASRD) dated 5<sup>th</sup> June 2024 on file which examines the same six sites as the previous and also records Lough Corrib SAC IE0000297 as being screened in. Reasons are provided for the screening out of the other five European Sites examined. It also references an 'Appendix A: In-Combination Report for Afforestation proposed under CN86043'.

## **Appropriate Assessment Determination**

A DAFM Appropriate Assessment Determination dated 5th June 2024 is on file which sets out that the works as proposed in the AAR dated 14<sup>th</sup> February 2023 for CN86043 should be adhered to and sets out the mitigation measures prescribed.

## **Licence**

The decision to approve the licence application is dated 17<sup>th</sup> June 2024 and is recorded as advertised on the same date.

## **Appeal**

There is one third party appeal against the decision and the full grounds of appeal and Statement of Fact (SOF) received by the FAC have been provided to the relevant parties. The DAFM informed the FAC that the documents required under the Forestry Appeals Committee Regulations 2020 are provided through the Forestry Licence Viewer (FLV) and the parties were notified of this.

The full grounds of appeal are on file and have been fully considered by the FAC. In summary, the grounds of appeal in FAC 064/2024 include;

- That initial concerns have not been addressed.
- Issues regarding loss of light and drainage have not been dealt with.
- Human Effect Based on Proximity to Residence.
- Drainage – Water flowing from the site.

## **DAFM Statement (SOF)**

A response was provided on behalf of the Minister for Agriculture, Food and the Marine relating to the appeal. This outlines the procedure adopted by the DAFM in processing the application and the related dates and the final decision. It is submitted that the decision was issued in accordance with DAFM procedures, SI 191/2017 and the 2014 Forestry Act. The statements submits that there were two referrals (of the application) and that there were seven submissions made. The SOF indicates that the site was inspected on 24<sup>th</sup> March 2020 and notes from the inspection are set out which included in relation to a further information request made.

In relation to the grounds of appeal the SOF includes the following.

*'1. Proximity to residence: Increased open space and additional broadleaf planting was incorporated into the proposed project to ensure adequate setback from adjoining dwellings, as per FSM Scheme rules, and for landscape reasons.*

**2. Drainage from site:** A wet area was noted on inspection. This resulted in a Further information request for design changes. Additional setbacks and Native Woodland planting without additional drainage was incorporated in this regard, to create a natural attenuation area. I believe that the proposed project design will not result in any increased speed of runoff from the site, and the Native Woodland measures should decrease runoff from the site over time, as trees and ground vegetation become established.

**3. Overpopulation of Woodland in the area:** There is no evidence or Data to indicate a possibility that the proposed afforestation was excessive in terms of the amount of forestry in the vicinity. (Please note that the answer to q 10 should be NO, a clerical error on my part resulted in this not being changed from N/A to NO when the Ecology Report and AAD were received and final certification was being completed.)

**4. The time between the original application and the actual decision:** Referral to DAFM Ecology for stage 2 AA and AA Determination resulted in a longer time frame for a considered decision in this case, requiring a site inspection by the DAFM Ecologist, and preparation of an AA Determination and an Ecology Report.

**5. Impact on the environment.** The Project was referred to DAFM Ecology for AA Determination as it was not possible to screen out for Stage 2 AA due to hydrological linkage to downstream Natura site. The resulting AA Determination and Ecology Report considered any possible impact on the environment from the proposed project. In this regard, the site was inspected by the DAFM Ecologist to prepare a site-specific Ecology report, and this report, dated 9/5/22, was provided. Having reviewed this file and consulted with DAFM Forestry Management, I recommend in my original submission to the Statement of Facts to the FAC, that this Licence be remitted to allow a referral to NPWS to take place on 08/03/2023.

The FAC Decision on 14/07/2023 was to set aside and remit the Licence to require DAFM to refer the file to NPWS as intended and to undertake a new Screening for EIA.

The file was referred to NPWS on 27/07/2023. A response was received on 24/08/2023, including clarification that there were no recent records of corncrake in the locality.

The file was then sent to DAFM Ecology and a new AA Report was prepared by DAFM Ecologist Paul Phelan on 15/02/2024, being an updated version of that previously provided by DAFM Ecologist Barry O'Loughlin on 09/05/2022.

A new AAD and Ecology Report was provided by DAFM Ecologist Paul Phelan on 12/04/2024.

Following further review of the file, an Archaeological feature was identified in the vicinity of the project area and DAFM Archaeology input was sought. An Archaeological Report was received from DAFM Archaeology on 25/04/24. The file was referred back to my worklist on 20/05/24 and I reviewed the file, reports and documentation and completed the questions under the Environmental Considerations, EIA, Pre-Approval and Appropriate Assessment Tabs on the IFORIS certification page and certified the file, recommending "Approval with Conditions" on 22/05/24.

Due to the original In-Combination Report being out of date, the Licence did not issue and the AAD provided on 12/04/24 was updated on 05/06/2024 due to an updated in-combination Report. The file was again returned to my worklist on 06/06/2024. I reviewed the file, reports and documentation and completed the questions under the Environmental Considerations, EIA, PreApproval and Appropriate Assessment Tabs on the IFORIS certification page and certified the file, recommending "Approval with Conditions" on 06/06/24. The following specific conditions were recommended :

1. Strict adherence to all mitigation conditions as per attached updated Appropriate Assessment Determination, Ecologist Paul Phelan, dated 05/06/2024, based on an Appropriate Assessment Report, Ecologist Paul Phelan, dated 15/02/2024. REASON: In the interest of protecting the environment.

2. Strict adherence to all mitigation conditions as per attached Ecological Report, Ecologist Paul Phelan, dated 12/04/2024. REASON: In the interest of protecting the environment.

3. Strict adherence to all Archaeological conditions as per attached DAFM Archaeological report, dated 29/04/2024, noting specifically the need for Archaeological monitoring in relation to part of the site. REASON: To protect the Archaeological Fabric of the site and area in general.'

#### **Post appeal Submission**

There is a post appeal submission from the applicant relating to FAC 064/2024 which states that the trees in front of the appellant's house are deciduous native trees, which lose their leaves in winter and are consequently bare in winter. It also includes that native trees are planted with minimal soil disturbance and that they are manually pit planted without use of machinery. It also states that their deep rooting systems would improve drainage in the site and that the aim would be to plant an aesthetically pleasing forest. The submission includes that the applicant does not wish to cause anxiety to the appellant and that the applicant is open to engagement with the appellant.

#### **Considerations of the Forestry Appeals Committee**

As alluded to earlier in this letter and 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. The remit of the FAC, as set out in Section 14B of the Agriculture Appeals Act 2001, as amended, is to consider appeals against specified 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.

In the first instance, the FAC had regard to the DAFM's processing of the licence application in light of the previous decision of the FAC to set aside and remit the first decision of DAFM on this licence application. That decision of the FAC, dated the 14<sup>th</sup> July 2023, required that the DAFM refer the application to the NPWS and to undertake a new screening for Environmental Impact Assessment in line with the

requirements of the Forestry Regulations 2017 and the EU EIA Directive before a new decision was made on the application.

On examining the file record the FAC finds that the application was referred to the NPWS on the 27<sup>th</sup> July 2023 as per the requirements of the previous FAC decision and that the NPWS responded on the 24<sup>th</sup> August 2023. The FAC also finds that the DAFM, in keeping with the requirements of the previous FAC decision relating to this licence, carried out an Assessment to Determine EIA Requirement based on an inspection certified on 12<sup>th</sup> June 2024 in advance of making the decision to grant the licence subject of this appeal. In this assessment the Inspector recorded a consideration of the application across a range of criteria relevant to the proposed afforestation, including water, soil, designated areas, HNVf, landscape, amenity and recreation, transfrontier, and cumulative effects, and determined that the project was not required to undergo EIA.

The FAC finds that the DAFM, in its processing of the application which led to the decision subject of this appeal (FAC 064/2024), carried out a fresh Appropriate Assessment screening of the proposal under Article 6(3) of the EU Habitats Directive. Accordingly, the FAC considered if the procedures leading to the making of the decision to grant the licence for the proposed development were consistent with the Habitats Directives. The FAC finds that the DAFM prepared the following documents / reports.

- An Appropriate Assessment Screening Report (AASRD) dated 12<sup>th</sup> of February 2024 carried out by a DAFM Ecologist. This examines six European sites and screens in Lough Corrib SAC IE0000297. The reasons are provided for the screening out of the other five European Sites examined. It references an *'Appendix A: In-Combination Report for Afforestation proposed under CN86043'*.
- An Appropriate Assessment Screening Report - Appendix A: In-combination report for Afforestation project CN86043 (In-Combination Assessment for the screened out European sites) which is itself undated.
- An Appropriate Assessment Report (AAR) dated 15<sup>th</sup> of February 2024 which in Section 4 sets out the mitigation measures required in the case of the proposal.
- An Appropriate Assessment Report - Appendix A: In-combination report for Afforestation project CN86043 (In-Combination Assessment for the screened in European site) which is itself undated.
- An Appropriate Assessment Screening Report & Determination (AASRD) dated 05/06/2024 which records examination of the same six sites as the previous and also records Lough Corrib SAC IE0000297 as being screened in. Reasons are provided for the screening out of the other five European Sites examined. It also references an *'Appendix A: In-Combination Report for Afforestation proposed under CN86043'*.
- An Appropriate Assessment Determination dated 5<sup>th</sup> June 2024 which sets out that the works as proposed in the AAR dated 14<sup>th</sup> February 2023 for CN86043 should be adhered to and sets out the mitigation measures prescribed.



The FAC also finds that the In-combination assessment report for the project (for the screened out sites) which is marked as being an Appendix A to the screening report dated 12<sup>th</sup> February 2024 includes the following wording.

*'It is concluded that there is no likelihood of the proposed Afforestation project CN86043, when considered individually, having a significant effect on the relevant European Site(s), as described elsewhere in the Screening Report. There is no likelihood of residual effects that might arise from this project, which are not significant in themselves, creating a significant effect in-combination with other plans and projects. The relevant Qualifying Interests / Special Conservation Interests and Conservation Objectives, as listed elsewhere in the Screening Report, have been taken into consideration in reaching these conclusions.*

*Furthermore, it is considered that the regulatory systems in place for the approval, operation (including any permitted emissions) and monitoring of the effects of other plans and projects are such that they will ensure that they do not have any significant effect on those same European Site(s). There is no likelihood that the proposed project will have, or contribute to, any significant effect on those same European Site(s), when considered in combination with other plans and projects. Note that those European Site(s) upon which, a likelihood of a significant effect arises when considering the project individually, are screened in and will be progressed to, and addressed in, Stage 2 Appropriate Assessment.'*

In relation to In-Combination assessment the FAC would understand that the consideration of other plans and projects should take place as part of the process to ascertain whether the project, either individually or in-combination with other plans or projects, is likely to have a significant effect on a European site and an Appropriate Assessment of the implications of the project and such effects on the European site, having regard to the conservation objectives of the site concerned. It appears to the FAC that it is not clear that the wording in the In-combination statement relating to the screened out sites demonstrates that the potential for significant effects to arise from the proposal in-combination with other plans and projects was considered by the DAFM as the wording refers to consideration on the basis that there is no likelihood of 'residual effect(s)' that might arise, which are not significant in themselves, creating a significant effect in combination with other plans and projects.

In the FAC's view, the reference to 'residual effects' in the In-Combination report / assessment on file (for screened out European sites) is a significant error as it is not clear what effects are being referred to in this instance and there is no explanation as to what gives rise to these effects such that they can be described as being 'residual'. The FAC 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 FAC also finds that the Appropriate Assessment Determination has included an incorrect date (14<sup>th</sup> February 2023) for the Appropriate Assessment Report that it relies on, whereas the correct date for same should be 15<sup>th</sup> February 2024. The FAC considers this to be a minor or typographical error as the correct date appears elsewhere in the documentation including in the conditions of licence as issued.

The FAC also finds that there is on file an Appropriate Assessment Screening Report & Determination (AASRD) dated 5<sup>th</sup> June 2024. While the FAC notes the reference in the SOF to the original In-Combination Report being out of date, and as the Licence did not issue, the AAD provided on 12<sup>th</sup> April 2024 was updated on 5<sup>th</sup> June 2024 due to an updated in-combination Report, the purpose of this screening report (of June 5<sup>th</sup>) isn't immediately obvious to the FAC as it postdates the AAR that the AAD relies on. Neither does it appear to the FAC that there is an AAD dated 12<sup>th</sup> April 2024 on the file record. The decision in this case is being set aside and remitted to the Minister arising from a significant error in carrying out the In-Combination Assessment for the screened-out sites and the Minister should take the opportunity to avoid having an Appropriate Assessment Screening on file which is out of sequence with the other Appropriate Assessment documentation generated in the processing of the application and so avoid a lack of clarity as to which screening report is actually being relied on.

The FAC considered the contention in the grounds, supported by content under the headings titled *'Further Comments in relation to ..'*, in the letter attached to the NOAF, that the initial concerns regarding loss of daylight and drainage have not been dealt with.

In relation to Human Effect Based on the Proximity to Residence, the FAC notes that the appellant provides a summary relating to the initial Notice of Appeal and the reply from the Department and then goes on to provide the further comment within the scope of this appeal. In this further comment the grounds submits that common sense and basic knowledge would show that from the ordnance survey maps provided in the reports, trees are proposed to grow in front of the appellant's house which would take from the sunlight that comes into the house and that a primary school student could deduce that. It also states that if the appellant does need a report, then, the information of the requirements should have been provided (to the appellant).

In considering this ground the FAC noted that no engineering or other report has been submitted with the NOAF for appeal FAC 064/2024 nor does it consider that it is within the FAC's remit in ordinary course to determine what additional reports or supporting information that an Appellant should submit. This ground of appeal contends that the proximity of the afforestation will result in reduced sunlight (to the appellant's home). In considering this ground the FAC noted the requirements of the Environmental Requirements for Afforestation (June 2024) specifies a minimum unplanted setback of forestry from a dwelling of 60m (or 30m with the approval of the owner of the dwelling) and that the proposal was revised by DAFM to include the planting of a 30m wide belt of broadleaved species adjacent to the 60m unplanted setback. The FAC notes that Plot 3 which appears to be situated in front of the appellant's property (as

per post code in their address) is for Bio i.e. unplanted. The FAC considers that the appellant has adduced no convincing evidence to demonstrate that the proposal will negatively impact on daylight to the dwelling. The FAC is not satisfied that an error was made in the processing of the application as it relates to this ground of appeal.

In relation to Drainage the FAC notes that the appellant provides a summary relating to the initial Notice of Appeal and the reply from the Department and then goes on to provide the further comment within the scope of this appeal. In this further comment the grounds submits that while the lack of susceptibility to flood risk within the site, as per the OPW indicative flood model, may conform to the criteria, that there is experience that there is already runoff from the site and makes reference to current sponge-like qualities and that Sitka spruce will cause even more runoff. The ground also references that if the appellant does need a report, then, the information of the requirements should have been provided (to the appellant).

In considering this ground the FAC noted that no engineering or other report has been submitted with the NOAF for appeal FAC 064/2024 nor does it consider that it is within the FACs remit in ordinary course to determine what additional reports or supporting information that an Appellant should submit. The FAC noted that the site was field inspected by a DAFM inspector and noted the content relating to this matter in the SOF dated 28<sup>th</sup> August 2024, wherein it states;

*'Drainage from site: A wet area was noted on inspection. This resulted in a Further information request for design changes. Additional setbacks and Native Woodland planting without additional drainage was incorporated in this regard, to create a natural attenuation area. I believe that the proposed project design will not result in any increased speed of runoff from the site, and the Native Woodland measures should decrease runoff from the site over time, as trees and ground vegetation become established.'*

The FAC considers that the appellant has adduced no convincing evidence to demonstrate that the proposal will impact negatively on drainage in the area. The FAC is not satisfied that an error was made in the processing of the application as it relates to this ground of appeal.

The grounds also query what type of machinery will be used in planting the site and whether this machinery might cause difficulty for emergency vehicles (accessing the area). The FAC considers that the size of machinery involved in planting a forest such as is proposed is not materially different to the range and scale of machinery involved in agricultural operations. The FAC considers that the appellant has adduced no evidence to demonstrate that the proposal will cause difficulty for emergency vehicles in the area. The FAC is not satisfied that an error was made in the processing of the application as it relates to this ground of appeal.

The grounds also submit that the proposal might impact on broadband service in the area. The FAC considers that the appellant has adduced no evidence in relation to this ground of appeal. The FAC is not satisfied that an error was made in the processing of the application as it relates to this ground of appeal.

The FAC finds that the approval letter for licence CN86043 states that the area of the proposal is 7.67ha and that elsewhere in the file documents and also on the FLV that the project area is stated as 7.68ha. The FAC also finds that the Appendix A as included with the licence as issued is unpopulated. The FAC considers that the description of the Appendix A in the approval letter is somewhat confusing where it states that *"Described below are certain specific Operational Proposals particular to this application that have been approved. These must be implemented in full and in accordance with any Supplementary Details in order to comply with both the Afforestation Licence and the Technical Approval for the Afforestation Scheme. No change is permitted to these proposals and to the species approved unless agreed in advance by the Department."* The FAC would expect that based on such wording that the details as applied for (and approved) would populate the various fields in Appendix A. The licence in this case is being set aside and remitted for reasons set out elsewhere in this letter and the FAC considers that the Minister should take the opportunity to clarify the confusion identified by the FAC in this connection on the record of the file before a new decision is made on the application.

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions received. The FAC is satisfied that a serious error was made in the making of the decision in this case. The FAC is, thus, setting aside and remitting the decision of the Minister regarding licence CN86043 in accordance with Section 14B of the Agriculture Appeals Act 2001, as amended, to undertake a new Appropriate Assessment screening of the proposal itself and in combination with other plans or projects under Article 6(3) of the EU Habitats Directive, before a new decision is made.

Yours sincerely,

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Seamus Neely, On Behalf of the Forestry Appeals Committee