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31<sup>st</sup> July 2025.

**Subject:** FAC Ref No 118/2024 regarding CN94837

Dear [REDACTED]

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 (DAFM). The FAC established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001, as amended, has now completed an examination of the facts and evidence provided by the parties to the 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 118/2024 was held remotely by the FAC on 12<sup>th</sup> June 2025.

In attendance:

FAC Members: Mr. Myles Mac Donnacha (Deputy Chairperson), Mr. Vincent Upton, 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 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 the licence CN94837. The reasons for this decision are set out hereunder.

### **Background**

An application for a licence was submitted and a licence (CN94837) for an approved afforestation of 15.66 hectares at Gortmore, County Clare was subsequently issued by the DAFM on the 10/10/2024, subject to conditions.

The project comprised three plots with plot 1 having an area of 15.11 hectares for planting of Sitka Spruce (12.09ha) and additional broadleaves (3.02 ha) and plots 2 and 3 with areas of 0.39ha and 0.17ha, respectively, set aside for biodiversity enhancement. Fencing of 2200 metres is indicated. The project area is described as consisting of primarily improved grassland over gleys. The site is accessed via the public road network fronting the site. Mapping indicates a watercourse along a section of the site boundary. In relation to planting, the planting method is angle notch with ground preparation of mounding /scrap mound with no use of fertiliser.

The project site is located on EPA mapping as within the River Sub-Basin Shallee\_010. Mapping data indicates the status as poor and in terms of risk is at risk. EPA data identifies pressures in the sub basin as anthropogenic pressures.

### **Applicant Documentation**

Documentation submitted included mapping, public notices, a Natura Impact Statement (NIS) with a completion date of 26/02/2024 marked as uploaded on the FLV on the 21/05/2024. The NIS identifies two Natura sites Ballyallia Lake SAC 000014 and Ballyallia Lough SPA 004041 for which pathways for effect were identified, assessed potential impacts and proposed mitigation measures in relation to these sites, considered in combination with other plans and projects, on these Natura sites and concluded, that, when mitigation measures are implemented, the project, individually or in combination with other plans and projects, will not have an adverse effect on the integrity of any of the European Sites listed in view of their conservation objectives and in view of best scientific knowledge.

### **DAFM Assessment**

DAFM documentation states that the date of publication and the date of publication for public consultation was 22/05/2024.

There is an Appropriate Assessment Screening Report (AASRD) dated 19/09/2024 on file prepared by an ecologist on behalf of the Minister for Agriculture, Food and the Marine and referred to as AA Screening Determination on the FLV. It examines twenty one European sites, Pouladatig Cave SAC IE0000037, Toonagh Estate SAC IE0002247, Lower River Shannon SAC, Ballyallia Lake SAC IE0000014, Ballyallia Lough SPA IE0004041, Newhall and Edenvale Complex SAC IE0002091, Ballycullinan Lake SAC IE0000016, Ballycullinan, Old Domestic Building SAC IE0002246, Dromore Woods and Loughs SAC IE0000032, River Shannon and River Fergus Estuaries SPA IE0004077, Knockanira House SAC IE0002318, East Burren Complex SAC IE0001926, Corofin Wetlands SPA IE0004220, Old Farm Buildings, Ballymacrogan SAC IE0002245, Moyree River System SAC IE0000057, Slieve Aughty Mountains SPA IE0004168, Ballyogan Lough SAC IE0000019, Poulmagordon Cave (Quin) SAC IE0000064, Lough Gash Turlough SAC IE0000051 and Old Domestic Buildings, Rylane SAC IE0002314 and screens in the Blackwater River (Cork/Waterford) SAC IE0002170.

Four sites were screened in the Lower River Shannon SAC IE0002165, Ballyallia Lake SAC IE0000014 Ballyallia Lough SPA IE0004041 and Ballycullinan Lake SAC IE0000016. Reasons are provided for the screening conclusions reached for each of the European Sites examined.

There is an Appropriate Assessment Screening Report Appendix A: In-combination report for Afforestation project CN94837 which is undated and uploaded on the FLV on the 10/10/2024 and refers to consulting databases on the 25/07/2024 in order to identify other plans and projects.

In section 6 of this document an In-Combination Statement concludes;

*“that there is no possibility that the Afforestation project CN94837, with the mitigation measures set out in Section 4, will itself, i.e. individually, adversely affect the integrity of those European Site(s) screened in*

*(as listed elsewhere in this AA Report. The relevant Qualifying Interests / Special Conservation Interests and Conservation Objectives have been considered in reaching this conclusion. There is no likelihood of any residual effects that might arise, which do not in themselves have an adverse effect, creating an adverse effect on the integrity of the site(s) 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 other plans and projects are such that they will ensure that those plans and projects do not give rise to any adverse effect on the integrity of those same European Sites. It is concluded that this project, when considered in combination with other plans and projects, will not adversely affect the integrity of those same European Site(s). Note that this relates to the proposed activities under CN94837 only. Any subsequent forestry-related activity shall be subject to the DAFM Appropriate Assessment Procedure, including an in-combination assessment, prior to any future consent being granted”.*

There is an Appropriate Assessment Determination (AAD) dated 19/09/2024 prepared by a consultant ecologist on behalf of the Minister for Agriculture, Food and the Marine and marked as uploaded to the FLV on the 10/10/ 2024 outlines mitigation measures in section 4. The basis for this AA Determination refers to the four screened in sites and concludes;

*“In combination effects were assessed prior to meeting this determination. The mitigations outlined will ensure that the proposed project will not represent a source and, as such, there is no potential for the project to contribute to any significant cumulative effects, when considered in combination with other plans and projects. Therefore, DAFM deems that the proposed project, when considered in-combination with other plans and projects, will not give rise to the possibility of significant effects on any European site. 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”.*

There is an Appropriate Assessment Screening Report Appendix A: In-combination report for Afforestation project CN94837, which is itself undated, is on file and is marked as uploaded on the FLV on the 10/10/2024. It is referred to on the FLV as in-combination screening stage. It refers to various online resources, datasets and DAFM's own databases that were consulted on the 19/09/2024 in order to identify other plans and projects which are also located in the general vicinity of the project area. This In-Combination report included a Statement which concluded;

*“that there is no likelihood of the proposed Afforestation project CN94837 when considered individually, having a significant effect on the relevant European Site(s), as described elsewhere in the Screening Report. 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”.*

There were a number of other reports prepared as part of the assessment of the project including A High Nature Value farmland (HNVf) Field Report with a date of 25/07/2024 carried out by an ecologist; a High Nature Value farmland (HNVf) Assessment Review with a date of 23/08/2024; two Hen Harrier reports one titled Hen Harrier Report – Breeding CN94837 dated 18/09/2024 and reviewed 26/09/2024 which determined CN94837 will not result in significant effects on breeding hen harrier, and a Hen Harrier Report– Non Breeding CN94837 dated 18/09/2024 which determined CN94837 will not result in significant effects on non-breeding hen harrier and a DAFM Archaeology report dated 18/06/2024 which indicated no objections.

The DAFM carried out an Assessment to Determine EIA Requirement is marked as Date Inspection Certified on 04/10/2024 and bearing the date 10/10/2024, 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, landscape, amenity and recreation, transfrontier, cumulative effects and referrals and submissions and determined that the project was not required to undergo EIA. The assessment notes that the project area meets the R+N score of 6.0 or greater in relation to High Nature Value farmland (HNVf), that the project area is wholly or partially within the foraging range of a Special Conservation Interest of a SPA, as per the Bird Foraging Table; refers to responses and submissions received, including that a hen harrier impact assessment report has been carried out by DAFM ecologist to ensure the project will not affect Hen harrier and the assessment included Appropriate Assessment Determination, High Nature Value farmland assessment and archaeologist report.

### **Referrals**

The FAC noted, based on documentation submitted, that the application was referred to Inland Fisheries Ireland on the 23/05/2024 who, in a response dated 31/05/2024 stated that Inland Fisheries Ireland (IFI) has no objections in principle to the proposed development and made a number of recommendations in relation to the operations.

### **Decision**

The decision to approve and the licence for an approved area of 15.66 hectares was issued on the 10/10/2024 and is marked as uploaded to FLV on the same date.

### **Appeal**

There is one appeal against the decision to grant the licence. The full grounds of appeal were considered by the FAC and are to be found on file. The Notice of the appeal and full grounds of the appeal were provided to the relevant parties. In summary, the grounds refer to;

- The site is located within Western Corridor Working Landscape as designated in the Clare County Development Plan 2023–2029 and the project is contrary to its provisions, and in particular to the criteria used in assessing permission for the construction of dwellings in the area and how does afforestation not intrude into this scenic area.

- Traffic and the issue of the impact on the road network is referred to and reference is made to assessments by Clare County Council for residential development and the impact of the project on the road network.
- The issue of water supply and the site's location within the protection area of a water supply is referred to.

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

A Statement of Fact (SOF) was received by the FAC from the DAFM and was provided to the parties. In summary, the SOF outlines the procedure adopted by the DAFM in processing the application, the related dates and the final decision. It is submitted (among other matters) that the decision was issued in accordance with DAFM procedures, SI 191/2017 and the 2014 Forestry Act. The SOF also specifically in relation to the grounds of appeal as submitted refers to;

- In relation to the County Development Plan the criteria for of the Western Corridor Working Landscape and all other elements of the Clare County Development Plan 2023–2029 was considered during the assessment of this licence and the in-combination report which considered the proposed afforested area within the Western Corridor Working Landscape will not have a visual impact.
- In relation to traffic the area licenced is for 15.66 ha of Afforestation and the expected traffic increase required to establish such an area will be minimal. The plantation would see little to no traffic from years 4 – 15 until preparations for any potential forest road. If an application for a forest road licence is submitted this will be assessed at that time and any potential traffic negativities will be given due consideration prior to any licence being issued.
- In relation to water supply this was considered both in the Appropriate Assessment documents and in the In-Combination report on record. This application was also referred to Inland Fisheries Ireland (IFI) who responded with a response that included their position of having no objection to the proposal. Reference is also made to requirements in relation to water setbacks and silt and nutrient controls.

### **Consideration of FAC**

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

The grounds of appeal express a number of concerns primarily in relation to the issue of impact on the landscape, traffic and water supply and the provisions of the current Clare County Development Plan.

In making a decision on the proposed afforestation, the Minister is required to undertake a number of processes and to have regard to certain matters. This includes, in keeping with Article 6 of the EU Habitats Directive, considering the likelihood of significant effects of a proposal itself or in-combination with other plans and projects on European sites, Special Areas of Conservation and Special Protection Areas, having regard to the conservation objectives of those sites and determining whether an Appropriate Assessment is required. In relation to the broader environment, the Minister must also consider the likelihood of significant effects on the environment which may arise from a proposal and whether an Environmental Impact Assessment is required.

The FAC noted that DAFM carried out an Assessment to Determine EIA Requirement bearing the date 10/10/2024 and is marked as certified on 04/10/2024, in advance of making the decision to grant the licence subject of this appeal. The FAC finds that the DAFM recorded a consideration of the application across a range of criteria relevant to the proposed afforestation and determined that the project was not required to undergo EIA. The FAC also noted that this assessment considered reports prepared in relation to the assessment of the project and submissions received.

In relation to Appropriate Assessment, the FAC finds that the DAFM, in its processing of the application which led to the decision subject of this appeal (FAC 118/2024), carried out an 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 Directive. The FAC finds that the DAFM prepared the following documents / reports.

- An Appropriate Assessment Screening Report (AASRD) dated 19/09/2024 on file as carried out by an ecologist.
- An Appropriate Assessment Report Appendix A: In-combination report for Forest afforestation project CN94837 which is itself undated, is on file and is marked refers to various online resources, datasets and DAFM's own databases that were consulted on the 25/07/2024 in order to identify other plans and projects which are also located in the general vicinity of the project area.
- An Appropriate Assessment Determination (AAD) dated 19/09/2024 which is marked as uploaded to the FLV on the 10/10/2024.
- An Appropriate Assessment Screening Report Appendix A: In-combination report for Afforestation project CN94837 which is undated and refers to various online resources, datasets and DAFM's own databases that were consulted on the 19/09/2024 in order to identify other plans and projects.

The application was subject to a period of public consultation when the application was made. The application included a Natura Impact Statement. The DAFM undertook its own screening and determined that the potential significant effects on a number of additional sites should be subject to appropriate assessment. The Minister did not request an amended Natura Impact Statement nor was an Appropriate Assessment Report prepared by the Minister. Instead, the Minister proceeded to make a determination. The FAC would understand that the screening undertaken by the Minister should have been subject to public consultation and that further, where the Minister found that the Natura Impact Statement did not assess all of the significant effects on European sites, the Minister should have requested an amended Natura Impact Statement or undertaken an Appropriate Assessment Report which would also have formed part of the public consultation process. The FAC is satisfied that this constituted a serious error in the making of the decision.

It is noted by the FAC that the In-combination report (screening stage) which deals with the screened-out sites contains the following as part of its conclusion *'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'*

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 sites 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 that deals with the screened-out sites, creates confusion as it is not clear what effects are being referred to in this instance and there is no explanation as to what gives rise to these effects such that they can be described as being *'residual'*.

The FAC 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 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 considers that this represents a significant error in the processing of the application and that in the context of undertaking the screening again the Minister should correct this language to avoid the introduction of any unnecessary confusion.

The FAC finds that the Appropriate Assessment Report Appendix A: In-combination report for Forest afforestation project CN94837 is referenced as an Appendix to an Appropriate Assessment Report. The FAC finds that there is no such report in the documentation available or published on the FLV and which does not appear on the record of the face of the record as made available to the FAC. The FAC concluded that it is a significant error to rely on a document in the processing of this afforestation licencing application which is not to be found on the record of the file.

In relation to Appropriate Assessment (AA), the FAC noted that twenty one European sites are recorded in the Appropriate Assessment Screening Report & Determination (referenced as AA Screening Determination) on the FLV as lying within 15km of the project area, defined as the likely zone of impact and that four sites were screened out and subsequently an AAD was carried out with an overall conclusion of no likelihood of an adverse effect on any European site.

The FAC noted that the proposed project is not within a Natura 2000 site nor is it required for the management of a Natura 2000 site. The FAC has confirmed that the four sites identified for initial screening are the only sites within a 15Km threshold distance for impacts to Natura 2000 sites and were subjected to the Appropriate Assessment process in relation to the potential impacts of the likely significant effects of Afforestation project CN94837.

In relation to the chronological assessment of AA, the FAC noted that the applicant submitted a NIS, that DAFM prepared an Appropriate Assessment Screening Report (AASRD) dated 19/09/2024 which references the submitted NIS, a Appropriate Assessment Determination (AAD) dated 19/09/2024 which refers to screening for Appropriate Assessment and that the applicant submitted a Natura Impact Statement with a completion date of the 26/02/2020 to facilitate the Minister carrying out an appropriate assessment and also outlines documentation and material taken into account including the NIS and the AA Screening Report and Determination for this project, and that an in-combination report was considered to ensure that conclusions reached regarding European sites remain accurate.

It is noted by the FAC that one of the In-combination reports refers to an Appropriate Assessment Report. As has been noted previously in this letter the FAC finds no record of an Appropriate Assessment Report in the documentation available to it as published on the FLV. The In-Combination report is described as an appendix to an AAR that does not exist in the public record. The FAC considered that it is also an error in the processing of the application to rely on an appendix to an AAR that does not appear on the record of the application.



Specifically in relation to the grounds of appeal these express a number of concerns primarily in relation to county development plan provisions, the assessment of the project, traffic impact and water supply.

In relation to the provisions of the county development plan the plan outlines an overall strategy for the proper planning and sustainable development of the functional area of Clare County Council over a 6 year period covering a wide range of matters including economic development, agriculture, rural housing settlement strategy and housing strategy and landscape protection. 'Working Landscapes' are those areas within 'Settled Landscapes' that contain pockets of concentrated development or a unique natural resource and the Western Corridor Working Landscape is one of two such landscapes. The provisions of the plan would not appear to preclude afforestation and there is a general objective in the plan to facilitate forestry in the county.

In relation to the provision of rural housing there are provisions in the rural housing strategy of the county development plan in relation the assessment of housing in rural areas specifically which apply to housing and not to other forms of development. The decision before the FAC is the decision of the Minister for Agriculture, Food and the Marine in relation to an afforestation licence application under the Forestry Act 2014 and the Forestry Regulations 2017. The FAC has no role in planning permissions.

In relation to the issue scenic landscapes there are areas designated as scenic based on landscape characterisation and the area within which the project is proposed is not within such a designation.

In relation to traffic the FAC noted that the site gains direct access onto the public road network. The FAC considered that the level of traffic generated by the afforestation project would not be greater than current agricultural practice and would be lower for a number of years after establishment and before thinning operations. The decision before the FAC relates to an afforestation proposal and the evidence before the FAC indicates that access for the proposed operations is adequate. The FAC consider that should the landowner seek to fell trees in the future, they would require a tree felling licence and would be required to adhere to any related conditions in addition to any laws regarding the standard of the access road and the use of public roads.

In relation to water supply and protection of groundwater generally the FAC noted that reference is made to Drumcliff Springs supply which is the public drinking water for the town of Ennis and that there are two main springs which rise within approximately 20 m of each other providing the source of this supply. The site is within the delineation of an Inner Protection Area which is a large area underlain by limestone and which is designated as an area which is required to protect the source from microbial and viral contamination. The project site is not located in close proximity to the water supply abstraction point which is near the town of Ennis.

The FAC noted that the issue of water protection was considered in the assessment of the project and also noted these matters were considered as part of the application process and that there are specific measures set out in the Environmental Requirements for Afforestation and the Forestry Standards Manual in relation to drainage and water setbacks and there are numerous mitigation measures in the

AA Determination (adherence to which is a condition of the licence) which serve to protect water quality and restrict the drainage works on site. These include a requirement that water setbacks remain undisturbed and unplanted and that drains on site must not connect to any existing aquatic zone or relevant watercourse. The FAC considers that these conditions will act to retain the current drainage status of the site and mitigate against potential impacts on adjoining lands and watercourses. This approach is considered reasonable in the interest of protecting water quality and the hydrology of the site. The FAC concluded that the DAFM has not erred in its processing of the application in so far as these grounds of appeal are concerned.

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 or a series of errors were 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 CN94837 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 prior to the making of a new decision.

Yours sincerely,

A black oval redaction mark covering the signature of Derek Daly.

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Derek Daly On Behalf of the Forestry Appeals Committee