



15th July 2025.

Subject: Appeal References: FAC 053/2024 & FAC 054/2024 regarding CN91288.

Dear

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

DECISION.

Having regard to the evidence before it, including the Department of Agriculture, Food and the Marine (DAFM) record of the decision, the Statement of Fact (SoF) provided by the DAFM, all materials on file, the notice and grounds of appeal and post-appeal submissions and the considerations set out below the FAC has decided to allow the appeal and set aside the decision of the Minister regarding licence CN91288.

THE LICENCE.

Licence CN91288 is an application for the afforestation of 23.09 Ha. in 10 Plots (6 of Native Forest and 4 of Sitka spruce & Additional Broadleaved species), located in the townlands of Drumcartagh or Diamondhill, Drumbagh, Drumbo, Drummully West, Co. Cavan.

The application for the licence was submitted to the DAFM on the 11th of November 2022. A decision approving the licence was issued on the 14th of May 2024 with conditions including compliance with the Forestry Standards Manual & Environmental Requirements for Afforestation, retention of existing trees and hedgerows on site, adherence to the mitigation measures in the DAFM Appropriate Assessment Determination, adherence to the conditions of the DAFM Archaeological Report, and a setback of 150m from the house to the north of the site.

FORESTRY APPEALS COMMITTEE.

A hearing was held remotely at a sitting of the FAC held on the 12th of June 2025 which considered the appeal and the processing of the licence as it relates to the decision to issue the licence on the 14th of May 2024.

The FAC members present were: Mr. Myles Mac Donncadha (Deputy Chairperson), Mr. Derek Daly and Mr. Iain Douglas.

Secretary to the FAC: Ms. Aedin Doran.

BACKGROUND.

The site is described being enclosed agricultural land comprising primarily of 63% Wet Grassland, 20% Improved Agricultural Grassland, 10% Treelines and the remainder as Scrub, Gorse, Ivy and Willowherb spp. The soil type is stated to be Surface water Gleys/Ground water Gleys (95%) and Variable soils (5%). The average slope across the site is described as being moderate (6%), ranging between 0% and 19%.

The site lies in the Water Framework Directive (WFD) Erne Catchment 36 and both the Cullies_SC_010 & Erne_SC_030 sub-catchments. The site is located partly in the Cullies_050 & Erne_080 Sub-Basins. The closest River Waterbody to the site is the Erne_080 (EPA Name Snakeel River). This river forms the eastern boundary of Plot 6, the northern boundary of Plot 7 and the southern boundary of Plot 9. Snakeel River was of Moderate Status in the 2016-2021 monitoring period and is At Risk in the 3rd cycle. Forestry is not identified as a pressure on the Snakeel River. The underlying Groundwater body is Killesandra IE_NW_G_062 which was of Good Status in the period 2016-2021 and is Not at Risk in the 3rd cycle.

The application documents before the FAC included an Inet Pre Approval Submission Report, a Biodiversity Map, a copy of the Site Notice, a photograph of the Site Notice in Situ, and a Fencing map all uploaded to the Forest Licence Viewer (FLV) on 05/12/2022. Also on file are a species map, a revised species map and photographs of the plots uploaded to the FLV on 16/02/2024.

The licence application was not referred to any consultation body specified in the Forestry Regulations 2017 (as amended).

On the DAFM file there is an In-combination Report for an Appropriate Assessment Screening Report (AASRD) dated 01/02/2024, an AASRD dated 08/02/2024, an In-combination Report for an Appropriate Assessment Report (AAR) dated 01/02/2024, an AAR dated 14/02/2024, an Appropriate Assessment Determination (AAD) dated 18/04/2024, a second In-combination Report for an AAR dated 02/05/2024, an Archaeology Report dated 03/05/2023, an Assessment to Determine EIA Requirement dated 07/05/2024 and an Inspector's Certification Report dated 07/02/2024.

The Inspector's Assessment to Determine EIA Requirement concluded that the proposed afforestation was not required to undergo EIA.

The Inspector's Certification Report recommends approval of the licence subject to conditions.

The AASRD (prepared by a consultant ecologist on behalf of the DAFM) identified five Natura 2000 sites within 15 km of the proposed afforestation: Lough Oughter And Associated Loughs SAC (Site Code) IE0000007, Lough Oughter SPA (Site Code) IE0004049, Upper Lough Erne SAC (Site Code) UK0016614, Upper Lough Erne SPA (Site Code) UK9020071, Moninea Bog SAC (Site Code) UK0030212. Three sites were screened in for Appropriate Assessment, Lough Oughter And Associated Loughs SAC, Lough Oughter SPA and Upper Lough Erne SAC.

The DAFM carried out an Appropriate Assessment in the form of an AAR which was advertised to the public on the FLV on 27/02/2024. The AAR concluded that the proposed afforestation, subject to a number of mitigation measures would not, by itself or in combination with other projects result in any adverse direct effect or residual adverse effect on the integrity of the Carrowmore Point to Spanish Point and Islands SAC, and Mid-Clare Coast SPA.

Submissions prior to the publication of the AAR.

Two separate third-party submissions were received on the licence application dated 29/12/2022 and 01/01/2023 respectively.

Submissions post publication of the Appropriate Assessment Report (AAR).

Following publication of the DAFM AAR on 27/02/2024 a second submission was received from one of the third-parties.

Both the Assessment to Determine EIA Requirement and Inspector's Certification Report indicated that the submissions were considered, and the licence as issued is dated the 14/05/2024.

THE APPEALS.

There are two third-party appeals against the decision to approve this licence application. The grounds of appeal are summarised as follows:

FAC 053/2024

The FAC noted the contents of this appeal in full and that it contains matters that do not address the licence or the manner in which the decision to issue the licence was arrived at. The FAC only considered those grounds of appeal that were relevant to establishing whether the DAFM made a serious or significant error, or a series of errors in making the decision under appeal, and whether that decision was made in compliance with fair procedures. The relevant grounds of appeal are summarised as:

Natural Environment

- The ground is not suitable for Sitka spruce.
- Windblow has caused damage to the existing trees.
- Who will monitor the mitigation measures in the Appropriate Assessment?
- The cumulative impact of forestry is not addressed adequately in the Appropriate Assessment.
- The surveys in the Appropriate Assessment were carried out at the wrong time of the year.
- The site contains High Nature Value farmland (HNVf).
- There is an ancient Yew tree that will be impacted by the afforestation.

Human Environment

- The residential amenity of the appellant's dwelling will be affected by the afforestation as it is already surrounded by forest on three sides.
- Windblow will affect access to the dwelling and utilities.
- There is palaeolithic archaeology on part of the site.

Technical Aspects

- The site notice 10/11/2022 is in the name of an individual no longer associated with the applicant company.
- Testing for palaeolithic archaeology is required before planting.
- The proposed afforestation will cause devaluation of the appellant's property.

FAC 054/2024.

- The site is used by Hen Harrier for foraging.
- The In-combination report did not include Lakeland Dairies land adjacent to the site.
- The experience of the ecologist and timing of visits to the site are questioned.
- There is too much reliance on water set-backs and to not cleaning of drains to protect water quality.
- The conclusions in the Inspector's Certification, (i) there was no AAD on file, (ii) the site is not HNVf are questioned.
- Matters raised in the appellant's submission were not addressed.
- There has been a breach of EU & National laws with regard to the protection of Birds, Wildlife, and Water.
- The proposal requires an EIA.

Post-Appeal Submissions.

Appellant Ref. FAC 053/2024 made a post-appeal submission that the applicant company's Companies Registration Office (CRO) classification has changed.

In the interest of clarity and for the avoidance of doubt, in considering the post-appeal submission the FAC deemed the matters raised to be an elaboration or clarification of points raised by the third-party in his grounds of appeal proper and did not consider it necessary to circulate the post appeal submission to the other parties.

CONSIDERATION BY THE FAC.

At its sitting on the 12th of June 2025, the FAC had before it the full DAFM record of the decision as made available on the FLV, the notice, the grounds of appeal, the Statements of Facts (SoFs) provided by the DAFM, post-appeal submissions and all materials on file. Having reviewed all the documentation and submissions, including those of the appellant, the FAC considered that there was sufficient information to enable it to assess and determine the appeal without recourse to an oral hearing.

DAFM STATEMENT OF FACT

Statement of Fact (SoFs) dated 28/01/2024 were provided by the DAFM for each of the appeals. The SoFs confirm the administrative details of the licence application, and state that the decisions were issued in accordance with DAFM procedures, SI 191/2017 and the 2014 Forestry Act. The SoFs contain specific responses to a number of the grounds of appeal for both appeals.

GROUND OF APPEAL.**FAC 053/2024.****Natural Environment*****The ground not suitable for planting Sitka spruce & Windblow.***

This ground contends that the lands are not suitable for the planting of Sitka spruce and illustrates the ground by reference photographs of trees fallen by windblow and instances where fallen trees may have an impact. The FAC noted the response to the grounds of appeal in the DAFM SoF under the heading "Natural/Human environment & technical/environmental aspects" which confirms that the proposed afforestation was assessed using the DAFM Standard Procedures and that the soil type is considered suitable for the species to be planted as indicated in the Forestry Standards Manual 2024. The FAC further noted that with regard to falling trees, the Forestry Standards Manual 2024 specifies set-backs that are required for a series of public utilities, public roads. The FAC noted that these set-backs are identified on the biomap/operational map submitted with the licence application and that it is a condition of the licence that the applicant complies with the Forestry Standards Manual 2024. The FAC does not consider that the DAFM has erred in its processing of the application as it relates to this ground of appeal.

The Appropriate Assessment.

The grounds of appeal on the Appropriate Assessment contend that it is unclear who will monitor the mitigation measures specified in the AAD; the cumulative impact assessment (the In-combination Report of the AAR) is not sufficient; the surveys of the AAR were carried out at the wrong time of the year; and that local biodiversity was not addressed. The FAC noted the response to the grounds of appeal in the DAFM SoF under the heading "Natural/Human environment & technical/environmental aspects" regarding the above matters. With regard to monitoring, the FAC understands that the DAFM have procedures for enforcement of licence conditions. With regard to cumulative impact of forestry on water quality, the FAC noted that there are a number of mitigation measures in the AAD for the protection of water quality. With regard to the time of year the AAR

surveys were carried out the FAC noted the response in the SoF. With regard to local biodiversity not being addressed the FAC noted that the Inspector's Certification states that that the site is not High Nature Value Farmland (HNVf), and that the landowner is bound in law to comply with Wildlife Act 1976 and Birds Directive. The FAC does not consider that the DAFM has erred in its processing of the application as it relates to this ground of appeal.

Ancient Yew Tree

This ground of appeal contends that the proposed afforestation will put an ancient Yew tree at risk. The FAC noted the response to this ground of appeal in the DAFM SoF under the heading "Natural/Human environment & technical/environmental aspects". The FAC noted that the that Plot 5 within which the Yew tree is located is to be planted with FT 1 - Native forests and that standard operational practice in such cases is to pit plant with no drainage. The FAC does not consider that the DAFM has erred in its processing of the application as it relates to this ground of appeal.

Human Environment

Residential amenity, dwelling already forested on 3 sides.

This ground of appeal contends that the proposed forestry will impact on the residential amenity of the appellant's dwelling. The FAC noted the response to this ground of appeal in the DAFM SoF under the heading "Natural/Human environment & technical/environmental aspects". The FAC noted that the appellant's house is located ca. 75m north of the nearest point of the proposed afforestation. The FAC noted Condition 5 Bullet point 5 which requires that there is no planting within 150m of the appellant's dwelling to ensure that current light levels at the dwelling are maintained. The FAC also noted that the set back from dwellings required under the Forestry Standards Manual is 60m (unless a setback of 30m is agreed between the parties). The FAC does not consider that the DAFM has erred in its processing of the application as it relates to this ground of appeal.

Windblow & access, utilities.

This ground of appeal contends that windblow of the proposed forestry poses a risk to the appellants access road and utilities. The FAC noted the response to this ground of appeal in the DAFM SoF under the heading "Natural/Human environment & technical/environmental aspects". The FAC further noted that with regard to falling trees, the Forestry Standards Manual 2024 specifies set-backs are required for a series of public utilities, public roads, and utilities and public road set-backs and that these set backs are identified on the biomap/operational map submitted with the licence application and that it is a condition of the licence that the applicant complies with the Forestry Standards Manual 2024. The FAC does not consider that the DAFM has erred in its processing of the application as it relates to this ground of appeal.

Palaeolithic archaeology on site.

This ground of appeal contends that Drumcartragh Hill or Diamondhill was the location of a dwelling site for an unknown species of hominin and that the proposed afforestation will impact on the archaeology of that site and that an archaeological assessment should be carried prior to planting. The FAC noted the response to this ground of appeal in the DAFM SoF under the heading "Archaeology Section response". The FAC noted that the licence application was referred to the DAFM Archaeology Section which recommended a series of conditions to be attached to the licence, including that *"Any previously unrecorded archaeological site or artefact discovered during the course of the works on site must be left undisturbed and the relevant authorities notified immediately; A minimum exclusion zone of 20m, preferably 100m or more, must be created until the any such site has been properly investigated; The relevant authorities include the duty archaeologist in the Forest Service, DAFM, and in the case of the discovery of human remains An Garda Síochána and the Local Coroner"*. The reason for the archaeology conditions is *"In order to safeguard the archaeology on site and the architectural heritage of local interest on site and in the area and to*

ensure the identification, recording, further preservation and protection as appropriate, of any other archaeological remains (including low visibility or subsurface remains) that may exist within the site.” The FAC does not consider that the DAFM has erred in its processing of the application as it relates to this ground of appeal.

Technical Aspects

Ownership.

This ground of appeal contends that the applicant according to the site notice 10/11/2022 is a named individual who is no longer a co-director of the company applying for the licence, and queries if the application can continue in those circumstances. The post-appeal submission suggests that the licence application is invalid due to the change in the applicant company's Companies Registration Office (CRO) classification. The FAC noted the response to this ground of appeal in the DAFM SoF under the heading “Site notice & property devaluation”. The role of the FAC is to consider whether the DAFM made a serious or significant error, or a series of errors in making the decision under appeal, and whether that decision was made in compliance with fair procedures. The matter of this ground of appeal does not ultimately fall within the remit of the FAC itself to determine.

Devaluation of property

This ground of appeal contends that the appellant's property will be devalued by the proposed afforestation. The FAC noted the response to this ground of appeal in the DAFM SoF under the heading “Site notice & property devaluation”. The FAC was established under the Agriculture Appeals Act 2001, as amended, with a function to hear and determine appeals against decisions of the Minister for Agriculture, Food and the Marine under Section 7 of the Forestry Act 2014, (excluding grant aid), and the Forestry Regulations 2017-2020 in relation to afforestation, tree felling, forest road works and aerial fertilisation. The matter of this ground of appeal does not ultimately fall within the remit of the FAC itself to determine.

Post appeal submission

The appellant's post appeal submission refers to the applicant company's Companies Registration Office classification. The FAC was established under the Agriculture Appeals Act 2001, as amended, with a function to hear and determine appeals against decisions of the Minister for Agriculture, Food and the Marine under Section 7 of the Forestry Act 2014, (excluding grant aid), and the Forestry Regulations 2017-2020 in relation to afforestation, tree felling, forest road works and aerial fertilisation. The matter of this ground of appeal does not ultimately fall within the remit of the FAC itself to determine.

FAC 054/2024.

Hen Harrier.

This ground of appeal contends that Hen Harriers use the site of the proposed afforestation for foraging. The FAC noted the response to this ground in the DAFM SoF that the site is not within any of the Hen Harrier layers in the DAFM IFORIS MapViewer system and that the Inspector's Certification confirms that the site is not within Current Breeding Distribution for Hen Harrier, as recorded in the current NPWS Article 12 Report. The FAC further noted that Under the Forestry Programme 2023 – 2027 new procedures were developed to protect Hen Harrier outside of designated areas. The FAC does not consider that the DAFM has erred in respect of this ground of appeal.

Water set-backs.

This ground of appeal contends that the proposal as licenced relies too heavily on water set-backs and no clearing of drains. The FAC noted that the proposal was subject to an AAD and that the licence requires compliance with the mitigation measures in the AAD and compliance with the Environmental Requirements for Afforestation 2024 and the Forestry Standards Manual 2024 all of

which have procedures to protect water quality. The FAC does not consider that the DAFM has erred in respect of this ground of appeal.

The experience of the ecologist and timing of visits to the site are questioned.

This ground of appeal questions the experience of the ecologist and timing of visits to the site. The FAC noted the response to this ground in the DAFM SoF that the field work was carried out by competent professionals employed by the Department. The role of the FAC is to consider whether the DAFM made a serious or significant error, or a series of errors in making the decision under appeal, and whether that decision was made in compliance with fair procedures. In reviewing the AASRD and AAR the AA the FAC is satisfied that the range and type of criteria considered was sufficient for DAFM to make an AAD.

The Inspector's Certification, (i) there was no AAD on file, (ii) the site is not HNVf and the matters raised in the appellant's submission were not addressed.

This ground of appeal questions the statements in the Inspector's Certification regarding, (i) the reference to the AAD on file, (ii) that the site is not HNVf and (ii) that the matters raised in the appellant's submission were not addressed. The FAC noted that the AAD was published on the FLV under the heading "Other" at 11:12:00 on 14/05/2024 and that the appellant's NOAF is dated 27/05/2024 and received by the FAC on 31/05/2024. The FAC finds that the AAD was on file at the time the appeal was lodged therefore the FAC does not consider that the DAFM have erred in respect of this ground of appeal.

With regard to the response in the Inspector's Certification that the site is not (High Nature Value Farmland) HNVf, the FAC noted the response to this ground in the DAFM SoF that the proposed afforestation area is not designated as HNVf in the DAFM IFORIS MapViewer system and therefore did not require HNVf assessment and that the site was assessed by a DAFM Ecologist who did not find any HNVf habitat. The appellant has adduced no evidence that the site or part of the site comprises HNVf. The FAC does not consider that the DAFM has erred in respect of this ground of appeal.

With regard to the appellant's contention that the matters raised in his submission on the licence were not addressed. The FAC noted that the appellant's submission was lodged on 02/01/2023 and was therefore on file when the Inspector's Certification was prepared on 07/05/2024 and that the Inspector's Certification refers only to a second submission by a separate observer. It is therefore not clear if the appellant's submission was taken into consideration as required by Article 20(1)(d) of the Forestry Regulations 2017 (as amended). The FAC considers that, on the face of the record, the appellant's submission was not considered and represents a serious error in the processing of the licence.

There has been a breach of EU & National laws with regard to the protection of Birds, Wildlife, and Water.

This ground of appeal contends that there has been a breach of EU & National laws with regard to the protection of Birds, Wildlife, and Water. The FAC noted that the appellant has adduced no evidence that the proposed afforestation is contrary to EU & National laws with regard to the protection of Birds, Wildlife, and Water. The FAC does not consider that the DAFM has erred in respect of this ground of appeal.

The proposal requires an EIA.

This ground of appeal contends that the proposed afforestation requires an Environmental Impact Assessment (EIA) to be carried out to examine the in-combination effect of the forestry and adjoining lands use for spreading wastewater by Killeshandra Dairies. 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). The Irish Regulations 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 proposed afforestation does not fall within the classes referred to in the Directive and is similarly not covered by the Irish regulations (S.I. 191 of 2017).

The FAC noted that notwithstanding that the development was subthreshold that the DAFM carried out an Assessment to Determine EIA Requirement in relation to CN91288 which considered the requirement of EIA under a range of criteria and concluded EIA was not required. The FAC does not consider that the DAFM has erred in respect of this ground of appeal.

APPLICATION DOCUMENTATION.

Site Notice.

In reviewing the documentation on file, the FAC noted that the site notice is dated 10/12/2022 and that in the DAFM SoF that the date given for the publication of the application is 11/11/2022 (which the FAC takes to mean the date the application was submitted). The FAC also noted that the date given for publication on the DAFM website (Afforestation Applications is 07/12/2022) and that the date for the uploading of the file on the FLV is given as 05/12/2002. While there is a lack of clarity on which date the application was made, in any event the site notice post-dated the making of the licence application.

The FAC further noted that Article 11(1) of the Forestry Regulations 2017 (as amended) states:

11. (1) Where an application involves—

(a) afforestation, or

(b) forest road works

the applicant shall, before the making of the application, erect a notice in a form determined by the Minister, at the entrance from the public road to the land to which the application relates or, where no entrance exists, at the point where it is proposed to create an entrance, so as to be easily visible and legible by persons using the public road, and shall not be obscured or concealed at any time.

The FAC noted that on the face of the record the notice is dated after the publication of the licence application (taken to be the date the application was made). The FAC is satisfied that the statutory requirement set out in Article 11(1) of the Forestry Regulations 2017 (as amended) has not been met and that failure to comply with the regulations represents a serious error in the licence application.

DAFM In-combination assessments.

In reviewing the documentation on file, the FAC noted that in the statement in the AASRD In-combination assessment (Appropriate Assessment Screening Report Appendix A: In-combination report for Afforestation project CN91288) dated 01/02/2024 it is stated that “*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 FAC noted the DAFM’s use of the word “*residual*” in its conclusion. The FAC considered that, 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 considers that it is not appropriate to consider potential "residual" effects of a proposed plan or project at the AA Screening stage. The FAC consider that this wording is ambiguous as it is not clear whether residual effects are being considered cumulatively in-combination with other plans and projects, or individually in-combination with other plans and projects, and that as a result it is unclear if the proper test has been applied. The FAC considers that the lack of clarity in the wording of the In-combination conclusion is a serious error in the processing of the AASRD of the licence application.

In reviewing the In-combination Reports on file state that the Cavan County Development Plan 2014 – 2020 (Consolidated version) was consulted on 01/02/2024 and 02/07/2024. The FAC noted that the current Cavan County Development Plan 2022 – 2028 came into force on 11/07/2022 and therefore the In-combination Reports refer to an incorrect development plan. The FAC considers that reliance on an out-of-date development plan is a serious error in the processing of the licence application.

In reviewing the In-combination Reports on file the FAC noted that the In-combination Report for the AASRD dated 01/02/2024 relies on the ASSRD which postdates it (08/02/2024), similarly In-combination Report for the AAR dated 01/02/2024 relies on the AAR which postdates it (14/02/2024). The FAC also noted a second document titled "Appropriate Assessment Report Appendix A: In-combination report for Afforestation project CN91288" dated 02/05/2024 and it is unclear which In-combination report is being relied upon in making the decision on the licence.

CONCLUSION.

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal, the SoFs submitted by the DAFM, and the post-appeal submission from the parties. In accordance with Article 14B of the Agricultural Appeals Act 2001 (as amended) the FAC is satisfied that a serious error was made in the making of the licence application itself and that a series of significant or serious errors was made in the making and processing of the application in relation to licence CN91288. The FAC is thus allowing the appeal and setting aside the decision of the Minister in relation to licence CN91288.

Yours sincerely,

Iain Douglas,
On Behalf of the Forestry Appeals Committee

