



30th May 2025

Subject: Appeal FAC 120/2024 against licence decision CK11-FL0108

Dear

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

Hearing and Decision

A hearing of appeal FAC 120/2024 was held remotely by the FAC on 29th April 2025. In attendance:

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

Having regard to the particular circumstances of the appeal, the FAC considered that it was not necessary to conduct an oral hearing in order to properly and fairly determine the appeal. Having regard to the evidence before it, including the record of the decision, the notice of appeal, and submissions received, the Forestry Appeals Committee (FAC) has decided to set aside and remit the decision of the Minister for Agriculture, Food and the Marine to grant licence CK11-FL0108. The reasons for this decision are set out hereunder in this letter.

Background

The decision under appeal relates to the granting of a felling licence at Labbadermody, Co Cork. The application as submitted is dated 26/03/2024. The application included operational and environmental information and maps outlining the licence area and operational and environmental features. The operations would involve the felling in 2026 of an existing plantation comprising an area of 13.10 ha composed mainly of Sitka spruce and a small amount of Japanese Larch. The felling age of the trees is described in the application as being 31 and 37 years depending on the plot. The felling plot is located within a larger forest area and surrounded on all sides by plantation and served by existing forest roads.

Appropriate Assessment Pre-Screening Report, dated 19/06/2024 (Applicants)

The applicant submitted a document entitled '*Appropriate Assessment Pre-Screening Report*', dated 19/06/2024. This report which is marked as being for Clearfell and Reforestation project CK11-FL0108, located at Labbadermody, Co. Cork, describes the site, including hydrology and operations in further detail and screens the proposal for potential significant effects on European sites. This document describes the proposal site as being composed entirely of plantation conifer high forest and states that the project area is made up of three sub-compartments comprising predominantly Sitka spruce, and to a lesser extent, Japanese Larch, planted in 1989, 1990 and 1995, forming a closed canopy over the majority of the project area. It states that there are two areas of windblow (approx. 1.97ha) accounting for 15% of the total project area.

An unnamed aquatic zone is said to flow in a northerly direction through the eastern section of the project area and a second unnamed aquatic zone is said to also flow through the north eastern section of the project area and draining into the first unnamed aquatic zone. Four relevant watercourses, one flowing in a north-easterly direction through the western boundary, one flowing in a south westerly direction through the northeast boundary, and two flowing in a north-easterly direction through the southern boundary are all said to drain into this aquatic zone.

The unnamed aquatic zone is said to then flow in a northerly direction and joins another unnamed aquatic zone (as visible on the OS 1:5000 base map) which flows in an easterly direction and joins the Foherish river (order 2) and ultimately drains to the Atlantic Ocean at Cork Harbour, approximately 84.2 km downstream of the project area. The closest live record of freshwater pearl mussel (*Margaritifera margaritifera*) is said to be located >6km downstream of the project area and it is also stated that the project area is not located within a catchment which is designated as a Special Area of Conservation for the protection of freshwater pearl mussel.

The project area is entirely located within the Mullaghanish to Musheramore Mountains SPA and is described as being part of a larger conifer plantation of varying age and class and that the surrounding area and wider landscape support an abundance of agricultural grasslands, additional conifer plantations, interspersed with pockets of scrub, mixed forests and heath/peatland habitat. The project area is said to be located on peaty gley soils (AminSRPT and AminPDPT), on a steep slope, sloping in a northerly direction. The project area is described as being accessible via the existing forest roads, CK11R0058, which runs along the northern boundary, and CK11R0010 which runs through the southeastern section of the project area. The project area is also accessible via the forest tracks CK11R0013 and CK11R0063 which run through the south-eastern section of the project area.

All European Sites within a distance of 15 km surrounding the project area were identified and considered in relation to hydrological pathways for likely significant effect and it is stated that in this case, there are no hydrologically connected European sites within 15 km of the project area. Seven European Sites are said to be located within a distance of 15km surrounding the project area as below.

- Blackwater River (Cork/Waterford) SAC (002170).
- Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment SAC (000365).
- Mullaghanish Bog SAC (001890).
- Mullaghanish to Musheramore Mountains SPA (004162).
- St. Gobnet's Wood SAC (000106).
- The Gearagh SAC (000108).
- The Gearagh SPA (004109).

The pre-screening exercise concludes that the Mullaghanish to Musheramore Mountains SPA is screened in and it is stated that that the project should proceed to Appropriate Assessment (Stage 2) to determine if the project will adversely impact the integrity of this European Site. No pathways for significant effect on any other European Site or QIs/SCIs were identified and the screening report concluded beyond reasonable scientific doubt, that the proposed project, individually or in combination with other plans and projects, will not have a significant effect on any European Site other than the Mullaghanish to Musheramore Mountains SPA.

NIS (Applicants) 19/06/2024

The application also included a Natura Impact Statement for Clearfell and Reforestation projects CK11-FL0108 and CK11-FL0109, located in the vicinity of Labbadermody and Glendav, Co. Cork. The NIS contains details of the NIS authors and their qualifications and at Section 1 states that *'The purpose of this Natura Impact Statement is to provide supporting information to assist the competent authority, in this case the Forest Service DAFM, to conduct an Article 6(3) Appropriate Assessment of a clearfell and reforestation project, located in the vicinity of Labbadermody, and Glendav Co. Cork. This report forms part of the supporting documentation for a forestry licence application in conjunction with two pre-screening reports.'* The potential significant effects on the screened in site are outlined in relation to the interests identified in the pre-screening document and mitigations are outlined relating to Hen Harrier as below.

- Using the best scientific data available to Coillte, potential disturbance to breeding hen harrier is not considered likely and potential disturbance operation(s) associated with this project can take place during the hen harrier breeding season.
- This mitigation is subject to confirmation by DAFM. Where access to the latest hen harrier dataset provided by NPWS determines that potential disturbance to breeding hen harrier is likely, no potential disturbance operation(s) associated with this project will take place during the period 1st March to the 15th August, inclusive.

DAFM Appropriate Assessment Screening Report & Determination (AASRD) dated 03/07/2024

An AA screening Report & Determination dated 03/07/2024 is to be found on file as prepared by a Forestry Inspector, Department of Agriculture, Food and the Marine on behalf of the Minister. The screening refers

to 'felling and reforestation project CK11-FL0108, at Labbadermody, Co. Cork'. This AASRD states that in undertaking this screening for Appropriate Assessment, the following were taken into account:

- the initial application, including all information submitted by the applicant, information available via iFORIS (including its GIS MapViewer) and input from the District Inspector (including information following field inspection);
- responses from consultation bodies and submissions from 3rd parties;
- any subsequent supporting documentation received from the applicant;
- any other plan or project that may, in combination with the plan or project under consideration, significantly affect a European Site;
- any information or advice obtained by the Minister;
- Conservation Objectives, Natura 2000 forms, site synopsis and supporting documents for each relevant European site, available from National Parks & Wildlife Service (www.npws.ie);
- available ecological and environmental information including aerial imagery, historical OS maps, DAFMs iFORIS system, QGIS and ArcGIS applications and data available at National Parks & Wildlife Service (npws.ie), EPA Maps, GeoHive, Data and maps (gsi.ie), Biodiversity Maps (biodiversityireland.ie);
- any other relevant information.

The report also records that combined with the project details and site characteristics summarised above, there is sufficient information within the application and available from elsewhere to form a sound judgement regarding the likelihood of the project having a significant effect on a European site.

The report records considerations of eight European Sites of which seven are the same as the Applicant's pre-screening report and the eighth being the Cork Harbour SPA IE0004030. The screening document concludes that an AA was required in relation to one European Site, ie Mullaghanish to Musheramore Mountains SPA IE0004162. This report references an 'Appendix A: In-Combination Report for felling and reforestation proposed under CK11-FL0108' with the commentary 'See File'.

DAFM Appropriate Assessment Screening Report Appendix A: In-combination report for Felling and Reforestation project CK11-FL0108.

There is an In-combination report on file for Felling and Reforestation project CK11-FL0108, which is itself undated and which the FAC understands to be an appendix to the AASRD dated 03/07/2024 and therefore is the In-Combination report for the screened-out sites. It includes the following statement:

'It is concluded that there is no likelihood of the proposed Felling and Reforestation project CK11-FL0108, 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.'

DAFM Appropriate Assessment Determination dated 16/10/2024

A separate AA Determination for felling and reforestation project CK11-FL0108, at Labbadermody, Co. Cork, (marked as prepared by Robbie Mc Namara, Ecologist, Envirico Ltd, on behalf of the Minister for Agriculture, Food and the Marine) and dated 16/10/2024, records what was taken into account in undertaking the Appropriate Assessment.

The AA Determination states that *'It was determined that adequate information was available to enable an Appropriate Assessment Determination to be reached for this project. The Minister has carried out the Appropriate Assessment of the potential impacts of the likely significant effects of felling and reforestation project CK11-FL0108 on those European sites 'screened in' (as listed above) and has made certain, based on best scientific knowledge in the field and the European Communities (Birds & Natural Habitats) Regulations 2011 (as amended) and the Forestry Regulations 2017, as amended, and Article 6(3) of the Habitats Directive, that the proposed project, individually or in combination with other plans or projects, will not adversely affect the integrity of any of the aforementioned European Sites, having regard to their conservation objectives, provided the following mitigation is implemented:*

- *In relation to Hen Harrier, the following mitigation is required, presented in the form of conditions to be attached to any licence issued:*
 1. *The site of this project lies within a Special Protection Area where hen harriers are a qualifying interest. If hen harrier breeding activity is identified within 1.2km of the project area, the National Parks & Wildlife Service should be notified immediately. If this activity is confirmed the Department will be informed and the licence amended to reflect this new status.*

The basis for this AA Determination is as follows:

- *The location of the project within the European site Mullaghanish to Musheramore Mountains SPA IE0004162.*

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.'

DAFM In-combination report for Felling project CK11-FL0108

There is a DAFM In-combination report on file which is marked as '*Appendix A: In-combination report for Felling and Reforestation project CK11-FL0108*'. The FAC understands that this report, which is itself undated, is an appendix to the Appropriate Assessment Determination dated 16/10/2024. It includes the following statement:

'It is concluded that there is no possibility that the Felling and Reforestation project CK11-FL0108, 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 CK11-FL0108 only. Any subsequent forestry-related activity shall be subject to the DAFM Appropriate Assessment Procedure, including an incombination assessment, prior to any future consent being granted.'

NPWS and County Council referral

The application was referred to Cork County Council and the National Parks and Wildlife Service on 01/05/2024 as part of a list of projects and described the project as being at Labbadermody, Cork. There is no record of a response on file from the Local Authority. The NPWS made a response to the referral dated 25/06/2024 which states that '*this application is in the Mullaghanish to Musheramore Mountains Special Protection Area (SPA) (Site Code:004162) which is designated for breeding Hen Harriers. Numerous old field boundaries are marked as occurring at the site on the Harvest Plan Map (presumably from 6 inch maps). Any that still occur should have a 5m wide habitat setback established and retro-fitted either side of the old field boundaries to help reduce shading out. The current proposed works provide an opportunity to do this if required and the Forest Service should note in terms of ensuring that a project is compatible with the Conservation Objectives (CO's) for the SPA that "maintain at least the length and quality of this resource" is a CO target for hedgerows in this SPA.*' The submission also had an attached appendix containing more general points that are said to be of relevance as assistance to the DAFM in its consideration of this matter.

WFD related

The project is shown on the catchments.ie mapping as being in the vicinity of the River Sub-Basin FOHERISH_010 which has a High Status recorded for the 2016- 2021 period and based on monitoring.

The Licence

The licence was issued with conditions and bears the date 17/10/2024.

Appeal

One third party appeal was made against the decision to issue the licence. The Notice and full grounds of appeal were provided to the parties. The grounds submitted state;

'The assessment for this project under Article 6(3) of the Habitats Directive does not contain precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works on the protected area concerned.'

The elaboration on the grounds include that:

- The Habitat Description for the project in the Natura Impact Statement is 100% WD4 and that this is incorrect. It states that the project area includes FW (Watercourses) and BL3 (Forest Road) as described in the document and that the proportion of the site in these different habitat classes is not stated.
- The proposed mitigation is inadequate to secure the Conservation Objectives of the Special Protection Area.
- There are lacunae in the Appropriate Assessment and cites use of Chemicals, Restoration objective and In-Combination.

The full text of the grounds of appeal and the elements and sub elements of same are on the file and have been considered in full by the FAC. The appellant requested an oral hearing of the appeal.

Ministers Statement (SOF)

The Minister provided a statement responding to the appeal which was provided to the parties. This statement sets out processing dates for the application and states that the DAFM decision was issued in accordance with DAFM procedures, S.I. 191/2017 and the 2014 Forestry Act, as amended.

The SOF sets out that the project was screened in relating to Mullaghanish to Musheramore Mountains SPA, based on the likelihood of a significant effect on the conservation objectives of this site, as they relate to breeding Hen Harrier. It states that as the project area is within the SPA, but not within any Red Areas as provided to DAFM by NPWS, the timing restriction (1st March to 15th August, inclusive) was not applied. It states that this is in accordance with DAFM's Hen Harrier Disturbance Operations Procedures, supported by NPWS through its provision of updated High Likelihood of Nesting Areas (HLNAs) dataset, which forms the basis for the Red Areas.

The SOF states that while outside of any Red Area at the time of licencing (both the original and replacement licence), the procedures require DAFM to alter conditionality regarding any unutilised licences that are overlapped by any new Red Area, as provided by NPWS either in response to the discovery of an individual nesting site, or in the form of the periodic HLNA dataset provided to DAFM to underpin the above procedure.

The SOF states that regarding reforestation, the mitigation prescribed for this project includes measures that will increase the amount of open space within and throughout the plantation, which will contribute to habitat diversity and opportunities for nesting and prey. It also states that the pre-thicket stage of the new crop will also provide a window of opportunities for a number of years, for breeding and foraging.

The SOF also states that for project areas located outside an SPA designated for breeding Hen Harrier, and outside any part of a 'Red Area' (High Likelihood Nesting Area) that extends beyond the SPA, the standard 'Red Area' restriction is applied where Hen Harrier breeding activity is confirmed and that this rule applies where any portion of the project area is located within 750m of the most likely location of the Hen Harrier nest/breeding activity identified. The location of this point, it states, can be established when breeding behaviour has been confirmed by a recognised ornithologist. Red area restrictions, it states, are also used within the Non- Designated Hen Harrier Nest Sites layer with 750m Disturbance Buffer (Ruddock et al 2016).

In relation to the submission in the grounds regarding chemical use the SOF states that the use of Acetamiprid, which is approved by DAFM for use in the forestry context, to control damage from Pine Weevil, in this project is limited to use in dipping offsite, at the forest nursery itself. It states that while mitigations included in the licence do focus on the protection of water, by inference, this same mitigation prevents any transfer of the chemical across the site.

The SOF states that in relation to the active substance Acetamiprid (2022), the European Food Safety Authority (EFSA) states the following: *"For environment, no conclusive, robust evidence of higher hazards compared to the previous assessment [i.e. previous literature papers investigating the chemical's hazards and/or exposure to humans and the environment] studies was found for birds, aquatic organisms, bees and soil organisms"* and references efsa.europa.eu/en/efsajournal/pub/7031.

Post Appeal Submissions

There are a number of post appeal submissions on file including two emails from the Appellant dated 18/03/2025 with attachments, and email from the Appellant dated 27/03/2025. The attachments to the Appellant emails included a document titled *'Review of mitigation measures for the protection of Hen Harrier and Merlin from forest management disturbances and recommendations for improvements to protection procedures'* - Birdwatch Ireland April 2024, a document titled *'The case for Sitka spruce (Picea sitchensis) to be classified as an Invasive Alien Species of Member State concern under Article 12 of the Invasive Alien Species Regulations'*, and a copy of a site inspection report for CK11-FL0105 on 10/02/2024.

The Appellant's post appeal submissions were circulated to the DAFM and the Applicant and no submissions relating to these were made to the FAC by either party. The post appeal submissions were considered by the FAC.

Considerations of the FAC

The FAC 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 FAC in the first instance considered whether an oral hearing was required in the case of the appeal and having regard to the particular circumstances of the appeal the FAC concluded that it was not necessary to conduct an oral hearing in order to properly and fairly determine the appeal.

The FAC considered the grounds of appeal which are stated as *'The assessment for this project under Article 6(3) of the Habitats Directive does not contain precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works on the protected area concerned.'*

In relation to the habitat types found on site, the FAC considers that there is no reason to find that the habitat descriptions of WD4 (conifer plantation) is incorrect. The presence of features such as watercourses and forest roads are well documented and, indeed, mapped in the application documentation.

In relation to Appropriate Assessment the FAC finds that the applicant submitted an Appropriate Assessment Pre-Screening Report dated 19/06/2024 and a NIS also dated 19/06/2024 which was for projects CK11-FL0108 and CK11-FL0109. The FAC also finds that the DAFM carried out an Appropriate Assessment Screening of the project which is set out in a report dated 03/07/2024. Also on file are two DAFM In-Combination Assessment reports (one for screened out sites and one for the screened in site) and a DAFM Appropriate Assessment Determination dated 16/10/2024.

The FAC finds that the In-combination assessment for the screened-out sites includes the following text in the statement at section 6. *'It is concluded that there is no likelihood of the proposed Felling and Reforestation project CK11-FL0108, 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'.*

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 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 serious error in the processing of the application as it indicates that the Minister has employed the incorrect test at screening stage and that in the context of undertaking the screening again the Minister should correct this language to avoid the introduction of any unnecessary confusion and ensure that the correct test is employed.

From the procedure adopted in relation to the processing of this application it appears that the NIS was prepared before the screening was undertaken by the Minister. Having regard to the Forestry Regulations 2017, the FAC considers that this may be acceptable in practice where there is a clear consistency in the reasoning in the assessment undertaken by the Minister with that in the NIS or that any significant inconsistencies are explained and where the assessment and conclusions are clear, definitive and complete. In this instance, the FAC finds that Mullaghanish to Musheramore Mountains SPA IE0004162 has been screened in as requiring stage 2 Appropriate Assessment for reasons including its SCIs and conservation objectives, ie Circus cyaneus (Hen Harrier, permanent [breeding & wintering]) [A082]. This European site is overlapped by the project area and it is stated in the AAS that it cannot be ruled out, based on objective scientific information, that the project itself (i.e. individually) will have a significant effect on this European Site.

The FAC finds that the NIS as submitted by the applicant deals at section 2 with potential impacts of the project on the screened in site (Mullaghanish to Musheramore Mountains SPA) and proposed mitigation. In considering whether there is a potential for the project to create an adverse effect on the Qualifying Interest in this case the NIS states the following.

'Hen harrier nest in open semi-natural habitat (i.e. open moorland, uplands bogs) as well as young, pre-thicket forestry plantations (Wilson et al, 2009). The traditional nesting habitat of Hen harrier has been predominantly heather, though they will also use scrub. Adult birds begin to occupy breeding areas in the uplands in March, with a view to forming pair bonds and to begin nesting (NPWS, 2022). They prey on small birds (such as Meadow pipit and Skylark) and mammals. Hen Harrier wintering grounds are typically lowland sites below 100m (Clarke & Watson, 1990). Outside the breeding season Hen harriers gather at communal roost sites at night (Clarke & Watson 1990). These roost sites can be communal (frequently used by several individuals) or solitary (used by individual birds regularly and/or infrequently). Roosts are used as safe bases from which to radiate out to hunt in the surrounding landscape during the daytime. Hen harrier select sites with suitable cover, low ambient levels of disturbance and presumably close to suitable foraging areas to roost.

Pressures on hen harriers include activities connected with forestry, agriculture, and wind energy developments as well as associated land-use pressures, including hedgerow removal, removal of copses and scrub, predation by mammals and birds, human intrusions and recreation (off-road driving, walking, horse-riding and cycling), and mechanical removal of peat (NPWS, 2022).

Nesting birds can be disturbed by activities or operations that involve excessive noise, vibration, mechanical movement, artificial lights. The use of machinery during forestry operations can give rise to such disturbance, depending on their location in relation to nesting Hen harrier (NPWS, 2015). The species has declined probably due to the loss of quality habitat due to agricultural changes and maturing forest plantations (NPWS 2022). The project relates to the clearing and reforestation in an existing forest. In its current state, the project area does not provide suitable foraging, nesting or roosting habitat for breeding Hen harrier. Therefore, the proposed clear-felling and reforestation will not result in any direct impact on the SCI species of this SPA as a result of habitat loss or direct mortality.

CK11-FL0108 and CK11-FL0109

The site of these projects lie within the Mullaghanish to Musheramore Mountains SPA, and will entail various operations that have the potential, through excessive noise, vibration, mechanical movement, artificial lights, etc. to disturb the breeding activity of Hen harriers. A potential disturbance operation is a forestry operation associated with a licenced project, which has the potential, through excessive noise, vibration, mechanical movement, artificial lights, etc. to disturb the breeding activity of Hen Harriers. Potential disturbance operations include: timber felling (thinning, clear-fell); timber extraction to roadside; timber loading at roadside; aerial fertilisation; mechanical cultivation for both afforestation and reforestation; forest road construction (and associated developments); the driving of fencing posts; and any other operation(s) the Forest Service may deem as potentially creating disturbance.

Using the best scientific data available to Coillte, potential disturbance to breeding hen harrier is not considered likely'.

The FAC finds that the NIS at section 3 deals with proposed mitigation wherein it states:

'The mitigation measures are as follows:

- Using the best scientific data available to Coillte, potential disturbance to breeding hen harrier is not considered likely and potential disturbance operation(s) associated with this project can take place during the hen harrier breeding season.*
- This mitigation is subject to confirmation by DAFM. Where access to the latest hen harrier dataset provided by NPWS determines that potential disturbance to breeding hen harrier is likely, no potential disturbance operation(s) associated with this project will take place during the period 1st March to the 15th August, inclusive.'*

There is no separate DAFM Appropriate Assessment Report to be found on the record of the file. The Appropriate Assessment Determination (AAD) recorded by the DAFM specifies the following,

'In relation to Hen Harrier, the following mitigation is required, presented in the form of conditions to be attached to any licence issued:

1. The site of this project lies within a Special Protection Area where hen harriers are a qualifying interest. If hen harrier breeding activity is identified within 1.2km of the project area, the National Parks & Wildlife Service should be notified immediately. If this activity is confirmed the Department will be informed and the licence amended to reflect this new status'.

In this case the FAC considers that the NIS does not deal sufficiently with the suitability of the project area for the species (Hen Harrier) and that there is no appreciable assessment of the potential effect of the project on Hen Harrier in the NIS. The NIS primarily provides a general overview of the species and makes a general statement. Neither does the FAC consider it sufficient to have mitigation which is subject to confirmation by DAFM and that no such confirmation is explicitly provided on the face of the record of the file for the application. The proposed mitigation also states the *'Where access to the latest hen harrier dataset provided by NPWS determines that potential disturbance to breeding hen harrier is likely, no potential disturbance operation(s) associated with this project will take place during the period 1st March to the 15th August, inclusive'* but does not set out who can report the presence of Hen Harrier in or near the site which in effect means that there is an absence of clear measures to deal with such an occurrence. The FAC considers that the absence of a clear assessment of the potential effect on the species and an absence of clear measures in the NIS, that has not been addressed by the DAFM process, represents a serious error in the processing of the application in so far as Appropriate Assessment is concerned.

In relation to the AAD, the measure specified by the DAFM is significantly different from that contained in the NIS and there is no explanation as to how the measure came to be specified or how it addresses the requirement to ensure that no impacts on the integrity of the site arise where a licence is granted at the stage that it was. The NIS measure relies on data from the NPWS whereas the AAD measure states that where breeding activity is identified the NPWS are to be notified who would then confirm the data and, apparently, inform the DAFM. The AAD measure does not specify if surveying is required or who might identify the activity and notify the NPWS. The FAC considers that the assessment overall contains significant lacunae and lacks clarity and precision and that this represents a serious error in the making of the decision.

The grounds contend that the Minister for Agriculture might bring about the deforestation of the lands and the conversion of the lands to some other open habitat of unspecified nature but does not provide a basis as to why this should occur in the specific case of CK11-FL0108 and how the Minister would achieve this through the licencing process. That being said the NPWS in their submission does request that field boundaries, where they still occur, should be protected and references the conservation objectives of the SPA. The request is based on the mapping contained in the application and references existing Ordnance Survey maps. Such maps can be over one hundred years old and mapped boundaries can take different forms. The site description and application documentation do not make reference to any existing field boundaries. However, while noting a generic reference to submissions from consultation bodies, the FAC does not consider that there is evidence that the Minister for Agriculture had due regard to the submission from the NPWS, which would likely have required seeking clarification and/or further information from the Applicant as to the presence or otherwise of such field boundaries and their condition. The FAC considers this to be a serious error in the making of the decision and in undertaking a new assessment the DAFM should address the matter.

The FAC considered the contention in the grounds that there are lacunae in the Appropriate Assessment Process arising from Chemical Use. The FAC noted the response from the DAFM in its SOF in this connection wherein it states;

'Regarding the use of Acetamiprid, this chemical is approved by DAFM for use in the forestry context, to control damage from Pine Weevil. Its use in this project is limited to dipping offsite, at the forest nursery itself. While mitigations included in the licence do focus on the protection of water, by inference, this same mitigation prevents any transfer of the chemical across the site.'

In its statement on the active substance Acetamiprid (2022), the European Food Safety Authority (EFSA) states the following: "For environment, no conclusive, robust evidence of higher hazards compared to the previous assessment [i.e. previous literature papers investigating the chemical's hazards and/or exposure to humans and the environment] studies was found for birds, aquatic organisms, bees and soil organisms."

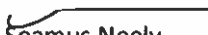
(See efsa.europa.eu/en/efsajournal/pub/7031)'

The licence in this case is being set aside and remitted arising from errors in the Appropriate Assessment process as outlined elsewhere in this letter. Notwithstanding, the FAC concluded that there was no convincing evidence before it that a significant or serious error was made by the DAFM in so far as the element of the grounds relating to chemical use is concerned.

The FAC concluded that the decision in relation to licence CK11-FL0108 should be set aside and remitted in accordance with Section 14B of the Agriculture Appeals Act 2001, as amended, and given the nature of the errors, the FAC considered that the Minister should undertake a new screening for Appropriate Assessment and request a new NIS or prepare an Appropriate Assessment Report that identifies and assesses likely significant effects on European sites of the proposal itself and in-combination with other plans and projects and, where they occur, mitigation measures and an assessment as to whether the

proposal would impact on the integrity of a European site prior to the making of a new decision. Whichever approach is adopted, the FAC considers that a new period of public consultation should be undertaken.

Yours sincerely,


Seamus Neely,

On Behalf of the Forestry Appeals Committee