



26 June 2020

[REDACTED]

Our ref: FAC 398/2019

Subject: Appeal in relation to afforestation licence CN83361

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine in respect of afforestation licence CN83361.

The FAC established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001 has now completed an examination of the facts and evidence provided by the parties to the appeal.

Background

Afforestation licence CN83361 was granted by the Department on 15 November 2019.

Hearing

A hearing of appeal 398/2019 was conducted by the FAC on 16 June 2020.

FAC Members: Mr Des Johnson (Chairperson), Mr Vincent Upton, Mr Pat Coman, and Mr Jim Byrne

Decision

Having regard to all the information before it the FAC has decided to confirm the decision of the Minister in respect of licence CN83361 for the reasons set out below.

The proposal comprises 2.51 ha of afforestation and 1000m fencing in Slievecorragh Co Wicklow comprising pedunculate oak, birch, hazel, and additional broadleaves. The proposal lies in the Liffey and Dublin Bay catchment, and Liffey sub-catchment.

The licence was granted with the following conditions:

Adhere to Environmental and Silvicultural conditions

All guidelines to apply

The FAC is satisfied that none of the licence conditions are inserted as mitigation measures for any European site.

**An Coiste um Achosairc
Foraoiseachta
Forestry Appeals Committee**

Kilminchy Court,
Portlaoise,
Co Laois
R32 DWTS

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There is a single appeal against the licence approval. The grounds of appeal are:

"based on the information supplied it was not possible to make a decision which was in compliance with the requirements of the Habitats and EIA directives, and having regard to the following judgements of the CJEU; C-258/11, C-164/17, C-323/17 and C-461/17. The test for Appropriate Assessment Screening in Irish law is as set out by "Finlay Geoghegan J. in; Kelly -v- An Bord Pleanala [2014] IEHC 400 (25 July 2014) there is no need to establish such an effect; it is, as Ireland observes, merely necessary to determine that there may be such an effect. It is necessary to assess the cumulative effects of forestry on the area since 1989".

In response to the appeal the DAFM stated that; *The proposed forest afforestation is 4.5km from the Wicklow Mountain SAC (002122) and SPA (004040). The distance from the project to Poulaphouca Reservoir SPA is 1.01km. There is no hydrological connectivity from the project area to any of these Natura sites. The site is currently overgrown with Bramble and European Gorse which is not a habitat that the qualifying interests of Wicklow Mountain SPA 004040 and Poulaphouca Reservoir 004063 can use for foraging. It is on this basis along with distance from the Natura sites that this project was screened out.*

Before making a decision, the Forestry Appeals Committee undertook an appropriate assessment screening and an examination of the proposal in relation to the requirements of the Habitats Directive and the Environmental Impact Assessment Directive. These considerations were based on information provided by the applicant, DAFM and other parties to the appeal and information available in the public domain. This assessment and screening are available on the public file. The licence was approved on 15 November 2019 subject to the standard conditions. The FAC is satisfied that none of the licence conditions are applied as mitigation measures for any European site.

The proposal is for 2.51 ha afforestation and 1000m stock fencing in Slievercorragh Co Wicklow comprising pedunculate oak, birch, hazel and additional broadleaves. There is to be mounding, slit planting, zero fertiliser, and herbicide control in years one and two. The current site use is described as agricultural land, heavily covered with bramble and European Gorse. The soil is podzols. The site stands at an elevation of 200 – 250m on a flat to moderate slope. The proposal has forestry situated to the east and the west. There is no aquatic feature on the site, and there is no hydrological connection to any Natura site.

The appropriate assessment screening examined the 5 Natura 2000 sites within 15 km of the proposed site. There is no hydrological connectivity from the proposed site to any of the listed Natura sites. The Slievercorragh river lies 465m south of the proposal. The river joins the Liffey which flows into the Poulaphouca Reservoir SPA. The Liffey itself lies 980m northeast of the proposal and flows into the Poulaphouca Reservoir SPA. Poulaphouca Reservoir SPA which lies 1.05 km from the proposal lists the Greylag Goose and Lesser Black Backed Gull as its Qualifying Interests. Given that the proposal is largely covered in European Gorse and bramble it does not comprise a habitat that the listed Qualifying Interests would use for foraging. Poulaphouca Reservoir is Hierarchy 1 on the County Development Plan landscape map and is also designated an area of outstanding natural beauty in regard to the views. The situation of the proposal with established forests to the east and west means that there is no visual impediment as Poulaphouca is not visible from the road.

Wicklow Mountain SAC and Wicklow Mountain SPA lie approximately 4.5 km from the proposal. There is no hydrological connection from the proposal to the SAC or the SPA and no listed Qualifying Interest which would be affected by the proposal. The Slaney Valley SAC lies at a distance of 8.8 km from the proposal. There is no hydrological connection to the SAC from the proposal and it lies in the Slaney and Wexford Harbour Catchment area. The Red Bog, Kildare SAC lies 12.53km from the proposal. Given the lack of hydrological connection and the distance there is no likelihood that the proposal will have a significant effect on the SPA and its conservation objectives.



There is a public road along the eastern boundary of the proposal and the road is between the proposal and Poulaphouca reservoir.

The area is sparsely populated with one off houses. The site is situated in the Liffey and Dublin Bay catchment, and Liffey sub-catchment. The site itself does not adjoin or contain an aquatic feature. The area is rural and remote with one-off houses sparsely populating the general area. A search of the Wicklow County Council planning website shows that there were only 4 planning permissions sought, with all being of a small domestic nature. Regards forestry related projects 3 forest road applications have been made in the area since 2016.

These other developments would not combine with the proposal to result in significant impacts on a European site. Having regard to the scale, nature and location of the proposal, other developments in the area, the qualifying interests of the European sites, separation distances and the fact of no hydrological linkage the FAC concludes that there is no likelihood of significant effects on any European site from the proposal alone or in combination with other plans or projects.

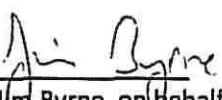
Annex II of the EIA Directive lists classes of development for which Member States may set thresholds or criteria for requiring environmental impact assessment. One such class is "initial afforestation and deforestation for the purpose of conversion to another type of land use". This is transposed into Irish Regulations as afforestation involving an area of more than 50 ha; the Regulations also provide for the Minister to consider if sub-threshold developments are likely to have significant effects on the environment and, as such, require EIA.

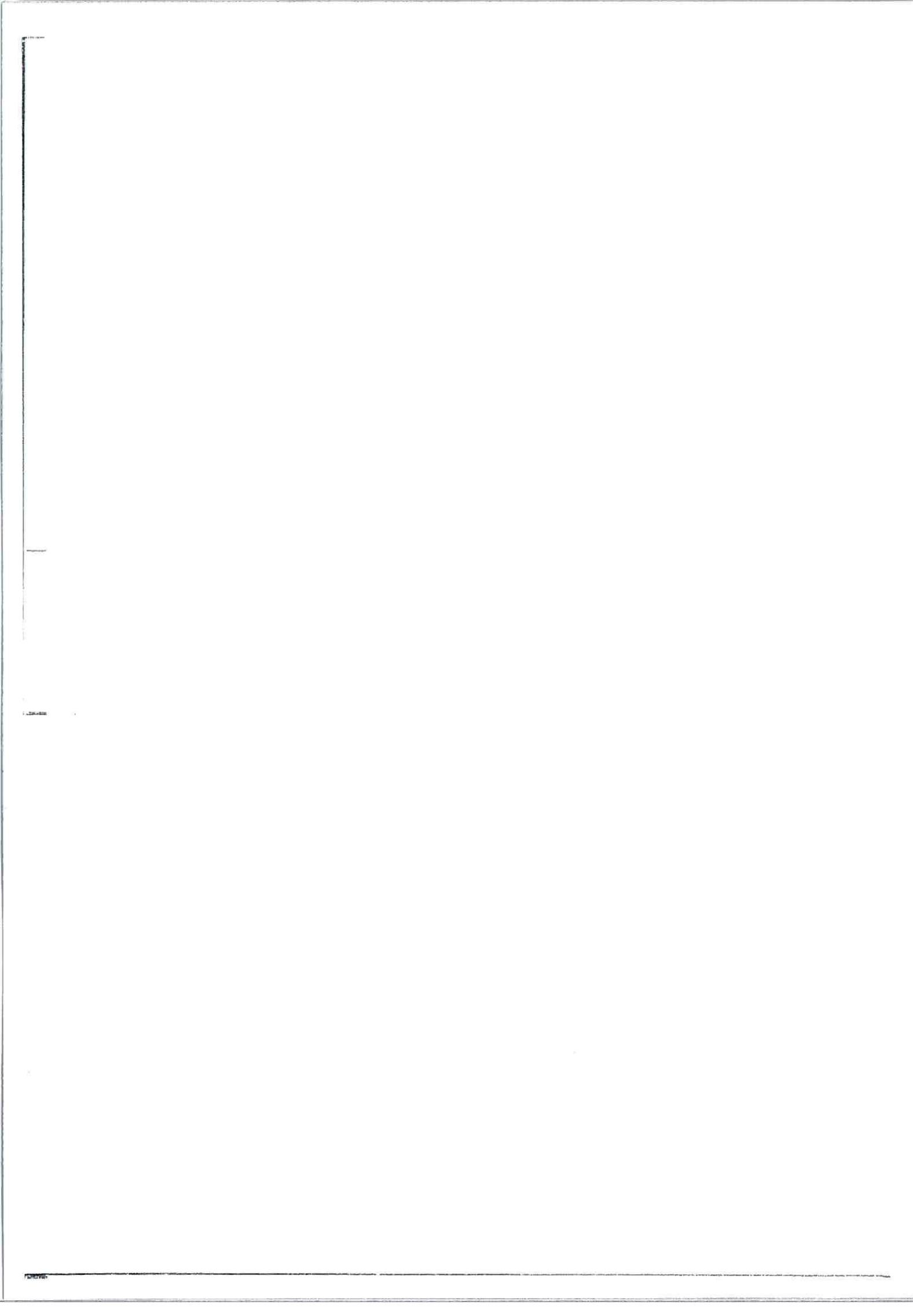
The proposed afforestation is significantly sub-threshold for the purposes of the EIA Directive at an area of 2.51 ha and as such does not require mandatory EIA. The proposed afforestation is located in a remote rural landscape with existing agriculture and forests. The landscape is not designated as sensitive in the Roscommon County Development Plan.

As noted above there are 5 European sites within 15 km of the proposed afforestation and there is no likelihood of significant effect on any of these sites from the proposed afforestation. There are mature forests to the north east and west. The FAC concluded that there is no real likelihood of the proposal resulting in a significant effect on the environment, itself or cumulatively with other projects and that the submission of an Environmental Impact Assessment Report or formal screening is not required.

In confirming the decision to approve the licence, the FAC concluded that the proposed development is in accordance with Government Policy and Good Forestry Practice.

Yours sincerely,


Jim Byrne, on behalf of the Forestry Appeals Committee



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Before making a decision, the Forestry Appeals Committee undertook an appropriate assessment screening and an examination of the proposal in relation to the requirements of the Habitats Directive and the Environmental Impact Assessment Directive. These considerations were based on information provided by the applicant, DAFM and other parties to the appeal and information available in the public domain. The licence was approved on 15 November 2019 subject to the standard conditions. The FAC is satisfied that none of the licence conditions are applied as mitigation measures for any European site.

The proposal is for 2.51 ha afforestation and 1000m stock fencing in Slievecorragh Co Wicklow comprising pedunculate oak, birch, hazel and additional broadleaves. There is to be mounding, slit planting, zero fertiliser, and herbicide control in years one and two. The current site use is described as agricultural land, heavily covered with bramble and European Gorse. The soil is podzols. The site stands at an elevation of 200 – 250m on a flat to moderate slope.

There is a public road along the eastern boundary of the proposal and the road is between the proposal and Poulaphouca reservoir. The road is sparsely populated with one off houses. The site is situated in the Liffey and Dublin Bay catchment, and Liffey sub-catchment. The site itself does not adjoin or contain an aquatic feature.

Licence Conditions

Licence issued subject to the terms and conditions of the Forestry Standards and Procedures Manual.

Appropriate Assessment Screening

The proposal is not related to or necessary for the management of any European site. There are 5 European sites within 15km from the proposed site,

Site Type	Site Code	Site Name	Distance To (m)	Qualifying Interests (* denotes a priority habitat)
SAC	002122	Wicklow Mountains SAC	4553.82	Habitats 3110 Oligotrophic waters containing very few minerals of sandy plains (<i>Littorelletalia uniflorae</i>) 3160 Natural dystrophic lakes and ponds 4010 Northern Atlantic wet heaths with <i>Erica tetralix</i> 4030 European dry heaths 4060 Alpine and Boreal heaths 6130 Calaminarian grasslands of the <i>Violetalia calaminariae</i> 6230 Species-rich <i>Nardus</i> grasslands, on siliceous substrates in mountain areas (and submountain areas, in Continental Europe)* 7130 Blanket bogs (* if active bog) 8110 Siliceous scree of the montane to snow

Site Type	Site Code	Site Name	Distance To (m)	Qualifying Interests (* denotes a priority habitat)
				<p>levels (Androsacetalia alpinae and Galeopsietalia ladani)</p> <p>8210 Calcareous rocky slopes with chasmophytic vegetation</p> <p>8220 Siliceous rocky slopes with chasmophytic vegetation</p> <p>91A0 Old sessile oak woods with Ilex and Blechnum in the British Isles</p> <p>Species</p> <p>1355 Otter (<i>Lutra lutra</i>)</p>
SAC	000781	Slaney River Valley SAC	8868.62	<p>Habitats</p> <p>1130 Estuaries</p> <p>1140 Mudflats and sandflats not covered by seawater at low tide</p> <p>1330 Atlantic salt meadows (Glauco-Puccinellietalia maritimae)</p> <p>1410 Mediterranean salt meadows (Juncetalia maritimi)</p> <p>3260 Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation</p> <p>91A0 Old sessile oak woods with Ilex and Blechnum in the British Isles</p> <p>91E0 Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae)*</p> <p>Species</p> <p>1365 Harbour Seal (<i>Phoca vitulina</i>)</p> <p>1355 Otter (<i>Lutra lutra</i>)</p> <p>1103 Twaite Shad (<i>Alosa fallax fallax</i>)</p> <p>1106 Salmon (<i>Salmo salar</i>)</p> <p>1099 River Lamprey (<i>Lampetra fluviatilis</i>)</p> <p>1029 Freshwater Pearl Mussel (<i>Margaritifera margaritifera</i>)</p> <p>1096 Brook Lamprey (<i>Lampetra planeri</i>)</p> <p>1095 Sea Lamprey (<i>Petromyzon marinus</i>)</p>
SAC	000397	Red Bog, Kildare SAC	12553.05	<p>Habitats</p> <p>7140 Transition mires and quaking bogs</p>
SPA	004063	Poulaphouca Reservoir SPA	1054.95	<p>Birds</p> <p>A043 Greylag Goose (<i>Anser anser</i>)</p> <p>A183 Lesser Black-backed Gull (<i>Larus fuscus</i>)</p>
SPA	004040	Wicklow Mountains SPA	4552.99	<p>Birds</p> <p>A098 Merlin (<i>Falco columbarius</i>)</p> <p>A103 Peregrine (<i>Falco peregrinus</i>)</p>

There is no hydrological connectivity from the proposed site to any of the listed Natura sites. The Slievecorragh river lies 465m south of the proposal. The river joins the Liffey which flows into the Poulaphouca Reservoir SPA. The Liffey itself lies 980m northeast of the proposal and flows into the Poulaphouca Reservoir SPA. Poulaphouca Reservoir SPA which lies 1.05 km from the proposal lists the Greylag Goose and Lesser Black Backed Gull as its Qualifying Interests. Given that the proposal is largely covered in European Gorse and bramble it does not comprise a habitat that the listed Qualifying Interests would use for foraging.

Wicklow Mountain SAC and Wicklow Mountain SPA lie approximately 4.5 km from the proposal. There is no hydrological connection from the proposal to the SAC or the SPA and no listed Qualifying Interest which would be affected by the proposal.

The Slaney Valley SAC lies at a distance of 8.8 km from the proposal. There is no hydrological connection to the SAC from the proposal and it lies in the Slaney and Wexford Harbour Catchment area.

The Red Bog, Kildare SAC lies 12.53km from the proposal. Given the lack of hydrological connection and the distance there is no likelihood that the proposal will have a significant effect on the SAC and its conservation objectives.

The area is rural and remote with one-off houses sparsely populating the general area. A search of the Wicklow County Council planning website shows that there were only 4 planning permissions sought, with all being of a small domestic nature. Regards forestry related projects 3 forest road applications have been made in the area since 2016.

These other developments would not combine with the proposal to result in significant impacts on a European site. Having regard to the scale, nature and location of the proposal, other developments in the area, the qualifying interests of the European sites, separation distances and the fact of no hydrological linkage the FAC concludes that there is no likelihood of significant effects on any European site from the proposal alone or in combination with other plans or projects.

EIA Examination

The EU Directive (Directive 2011/92/EU as amended by Directive 2014/52/EU) 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 (nor clear-felling) are 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 Forestry Regulations 2017 in relation to forestry licence applications require the compliance with the EIA process for applications relating to afforestation involving an area of more than 50 Hectares, the construction of a forest road of a length greater than 2000 metres and any afforestation or forest road below the specified parameters where the Minister considers such development would be likely to have significant effects on the environment.

The proposal is substantially sub-threshold and is located in a remote rural landscape with existing agriculture and forests. There are few other forestry licences in the vicinity or other projects. Traffic will likely increase during the site preparation and planting but this will be a temporary short-term

disturbance and not considered significant. There is no aquatic zone on the site and no hydrological connection from the proposed afforestation to any Natura site and as a consequence there would be no significant impact on water quality. The proposal is not within an SAC or an SPA and there is no likelihood of it impacting on any designated sites. Poulaphouca Reservoir is Hierarchy 1 on the County Development Plan landscape map, and is also designated an area of outstanding natural beauty in regard to the views. The situation of the proposal with established forests to the east and west means that there is no visual impediment as Poulaphouca is not visible from the road in any event.

As noted above there are 5 European sites within 15 km of the proposed afforestation and there is no likelihood of significant effect on any of these sites from the proposed afforestation. There are mature forests to the north east and west. Given the nature scale and location of the proposal, the FAC concluded that there is no real likelihood of the proposal resulting in a significant effect on the environment, itself or cumulatively with other projects and that the submission of an Environmental Impact Assessment Report or formal screening is not required.

Jim Byrne
On behalf of the FAC
18 June 2020